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**Preventative or Performative? Assessing the Role and
Intention of the UK's 'Hostile Environment' Since 2010**
Adam Weisz

Thesis adviser: Daniel Naujoks

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Abstract

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Since coming to power in 2010, the Conservative Party in the UK has been pursuing increasingly harsh policies tackling undocumented migration that have come to be collectively known as the 'hostile environment.' These policies seek to make life difficult for anyone living in the UK without regular status, by requiring documentation checks when accessing services such as healthcare, housing, employment, and so forth. The stated goal of the policies is both to encourage undocumented migrants present in the UK to leave, and to deter potential migrants from entering in the first place. By examining the manner in which such policies were designed and implemented, and critiquing the degree to which they were executed in a well-planned and methodical way, this thesis seeks to question the extent to which migrants themselves were the target audience of the hostile environment. It instead suggests that the hostile environment is an example of 'symbolic policy', with the primary aim being to appeal to domestic voters.

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Preventative or Performative? Assessing the Role and Intention of the UK's 'Hostile Environment' Since 2010

1. Introduction

*“The aim is to create here in Britain a really **hostile environment** for illegal migration.”¹*

These words, spoken in 2012 by then-Home Secretary Theresa May, have come to define the comprehensive, holistic immigration policy that has been steadily forming since the Conservatives took power in the UK in 2010 as the largest party in a coalition government. In the eight years since, the Conservatives have adopted a series of measures that have sought to curb immigration by ensuring that “migrants do not face border officials only when they enter the country for the first time, but as a constant part of daily life.”²

Today, anyone living in the UK can expect to face documentation checks should they try to apply for a job, rent property, access non-emergency NHS treatment, apply for a driving license, open a bank account, and much more; the point being that those without regular status will be denied access to these services. As Theresa May told BBC's

¹ James Kirkup and Robert Winnett, “Theresa May interview: 'We're going to give illegal migrants a really hostile reception',” *The Telegraph*, 25 May 2012, <https://www.telegraph.co.uk/news/uknews/immigration/9291483/Theresa-May-interview-Were-going-to-give-illegal-migrants-a-really-hostile-reception.html>. Emphasis added.

² Jessica Elgot, “Theresa May's 'hostile environment' at heart of Windrush scandal,” *The Guardian*, 17 April 2018, <https://www.theguardian.com/uk-news/2018/apr/17/theresa-mays-hostile-environment-policy-at-heart-of-windrush-scandal>.

The Today programme in 2013, “What we don’t want is a situation where people think that they can come here and overstay because they’re able to access everything they need.”³ This highlights the twofold logic of this ‘hostile environment’: First, to make the lives of those already present in the UK so unbearable that they will ‘voluntarily’ return to their country of origin. Second, to act as a deterrent- to affect the decision of those still outside of the UK who might otherwise come, or overstay their visa.

While I will address both aspects of the hostile environment, it is the deterrent nature that will form the main focus of my study. I do this for several reasons. Firstly, in the short term the hostile environment obviously seeks to both discourage immigration and encourage emigration. But in theory, once all undocumented migrants currently in the UK have left, then the long-term role of the hostile environment will be to discourage further immigration.

Second, the national discourse around the hostile environment has focused on those already present in the UK, to the detriment of exploring several important human rights-related issues for those yet to arrive. The lack of focus on the hostile environment as an instrument of deterrence is worrying, given that deterrence is a key reason for its instigation. In 2013, immigration minister James Brokenshire said that the newly announced Immigration Bill⁴ had “two purposes” - “One was to attract those who wanted to come and to contribute, and the other was to deter those who did not.”⁵ When the

³ Alan Travis, “Immigration bill: Theresa May defends plans to create 'hostile environment',” *The Guardian*, 10 October 2013, <https://www.theguardian.com/politics/2013/oct/10/immigration-bill-theresa-may-hostile-environment>

⁴ This would go on to become the Immigration Act 2014.

⁵ House of Commons, “Debate on Immigration Controls,” *Hansard*, Volume 569, 22 October 2013, <https://hansard.parliament.uk/Commons/2013-10->

House of Commons was debating what would become the Immigration Act 2016, Theresa May argued that the reason more restrictions on illegal working was necessary was that it “remains one of the principal pull factors for people coming to live in the UK illegally.”⁶ However, it will be pertinent to remember that the hostile environment seeks to serve a dual role- inducing emigration as well as reducing immigration- and I will as far as possible accommodate this into my analysis.

Since the era of Margaret Thatcher’s radical neoliberalisation of the British political landscape, the Conservative party has tread a careful line between economic liberalism and social conservatism, and this is especially apparent in the area of immigration.⁷ The Thatcherite conception of market liberalisation would ordinarily be taken to include recognition of the economic benefits of free movement, however regular attempts have been made to promote policies restricting mass migration in order to appeal to a socially conservative base.⁸ Tony Blair’s Labour government in the 2000s, while taking some policy positions hostile to immigration, consistently emphasised the macroeconomic and cultural value that migrants could bring to the UK.⁹

[22/debates/13102256000001/ImmigrationControls?highlight=deter%20immigration#contribution-13102257000005](https://hansard.parliament.uk/Commons/2015-12-01/debates/13102256000001/ImmigrationControls?highlight=deter%20immigration#contribution-13102257000005), Column 22WH.

⁶ House of Commons, “Debate on the Immigration Bill 2015, Third Reading,” *Hansard*, Volume 603, 1 December 2015, <https://hansard.parliament.uk/Commons/2015-12-01/debates/15120141000002/ImmigrationBill?highlight=immigration%20bill#contribution-15120151001264>, Column 268.

⁷ Julie Smith, “Towards consensus? Centre-right parties and immigration policy in the UK and Ireland,” *Journal of European Public Policy*, 15:3 (2008):415-431, DOI: 10.1080/13501760701847689, 420.

⁸ *Ibid.*

⁹ Myriam Cherti, “The Policy Framework for Immigration Enforcement in the UK,” *Does Immigration Enforcement Matter (DIEM)? Irregular Immigrants and Control Policies in the UK*, Centre on

The Conservatives in opposition, therefore, presented themselves as a contrast, carving out a niche as the party that took voters' concerns about immigration seriously.¹⁰

However, the rise of the anti-immigration United Kingdom Independence Party (UKIP) from the late 2000s onwards posed a considerable threat to the Conservative party's vote, demonstrated through strong showings at the European Parliamentary elections,¹¹ a number of high-profile defections from the Conservatives to UKIP,¹² and a 2013 poll showing that nearly 30% of Conservative Party *members* identified as being likely to vote UKIP.¹³ By 2013, 77% of the British public were in favour of reducing immigration to some extent.¹⁴ Thus, concurrent needs to both distinguish themselves from more socially liberal opposition parties, and to stave off encroachment from the far right, have led to the Conservatives making policy pledges in order to show that they are willing to be tough on immigration.¹⁵

Often this has formed the basis of electoral platforms. In 2010, the Conservatives famously promised to “take net migration back to the levels of the 1990s – tens of

Migration Policy and Society, Project Report 4, November 2014.

https://www.compas.ox.ac.uk/media/PR-2014-DIEM_Policy_Framework.pdf, 3.

¹⁰ Smith, “Towards consensus?”, 423.

¹¹ *BBC News*, “Vote 2014: UK European election results,” Accessed 30 July 2018,

<https://www.bbc.co.uk/news/events/vote2014/eu-uk-results>.

¹² Rebecca Partos, “No immigrants, no evidence? The making of Conservative Party immigration policy,” *Political Insight* 5, Issue 3, (December 2014): 12-15,

<https://onlinelibrary.wiley.com/doi/pdf/10.1111/2041-9066.12068>, 14.

¹³ Tim Bale and Paul Webb, “Why Do Tories Defect to UKIP? Conservative Party Members and the Temptations of the Populist Radical Right,” *Political Studies* 62, (2014): 961–970, 964.

¹⁴ Scott Blinder and William Allen, “UK Public Opinion toward Immigration: Overall Attitudes and Level of Concern,” *The Migration Observatory at the University of Oxford*, 28 November 2016, <http://www.migrationobservatory.ox.ac.uk/resources/briefings/uk-public-opinion-toward-immigration-overall-attitudes-and-level-of-concern/>.

¹⁵ Partos, “No immigrants, no evidence?,” 14.

thousands a year, not hundreds of thousands”,¹⁶ while in 2015 they reaffirmed this commitment to reduce net migration, stressed their existing successes in immigration control, and vowed “to strengthen our borders, improve the enforcement of our immigration laws and act to make sure people leave at the end of their visas.”¹⁷ To a large extent, then, the hostile environment is a realisation and delivery of electoral pledges. One former Liberal Democrat special advisor told me that the Tories’ immigration policy was “150%” influenced by vote winning, with very few in the Cabinet believing that the ‘tens of thousands’ target could be met through hostile environment measures.¹⁸

That parties adopt policies to win votes seems almost trivially true. The responsiveness of political leaders to public opinion shifts is well documented.¹⁹ But parties also have distinct ideological identities that can constrain them in the set of possible policies they choose to adopt, regardless of how popular they would be: For example, it seems extremely unlikely that the Green Party would propose expansion of Britain’s coal mining industry, regardless of where public opinion lay. In political science scholarship, parties’ motivations are often characterised as either office-seeking (parties compete to win outright power), policy-seeking (parties compete to advance their own prefixed agenda), or vote-seeking (parties compete to win the support of the

¹⁶ *The Conservative Party*, “Invitation to Join the Government of Britain – The Conservative Manifesto 2010,” 2010, 21.

¹⁷ *The Conservative Party*, “Strong Leadership, A Clear Economic Plan, A Brighter, More Secure Future- The Conservative Manifesto 2015”, 2015, 29-30.

¹⁸ Interview with former Lib Dem Special Advisor, 29 June 2018.

¹⁹ Robert Erikson, Michael Mackuen and James Stimson, *The Macro Polity*, (Cambridge: Cambridge University Press, 2002), 339.

electorate).²⁰ However, rather than these being distinct conceptual frameworks, Müller and Strøm argue that they should be interpreted as competing and overlapping priorities, with leaders regularly being expected to find a compromise between a party's broad ideological commitments, and implementing policies that would provide electoral success.²¹ We have seen both ends of this in the current Conservative government: First, during his tenure as Prime Minister, David Cameron offered a referendum on Britain's membership of the EU as part of the Conservative's 2015 electoral platform,²² largely to win votes off UKIP, despite his own personal ideological preferences being staunchly pro-European.²³ On the other hand, in the run-up to the 2017 general election, Theresa May promised to ring-fence the foreign aid budget for ideological reasons, despite the fact that diverting it to domestic public services would have proved popular with the public.²⁴ With regards to the hostile environment, then, the challenge lies in deciding where on the spectrum these policies lie: To what extent is the primary policy aim to limit immigration, and to what extent are these policies a strategic move to win votes?

Obviously, without being able to read the minds of those in power making policy decisions, we cannot answer this question definitively. And in the sphere of

²⁰ Wolfgang C Müller and Kaare Strøm, *Policy, Office, or Votes? How Political Parties in Western Europe Make Hard Decisions*, (Cambridge, Cambridge University Press: 1999), 7.

²¹ Ibid, 12.

²² *The Conservative Party*, "The Conservative Manifesto 2015," 30.

²³ Heather Stewart, Anushka Asthana and Rowena Mason, "David Cameron on EU referendum: let us not roll the dice on our children's future," *The Guardian*, 3 June 2016, <https://www.theguardian.com/politics/2016/jun/02/david-cameron-eu-let-us-not-roll-the-dice-on-our-childrens-future>.

²⁴ Anushka Asthana, "May to resist pressure to cut Britain's foreign aid commitment," *The Guardian*, 12 February 2018, <https://www.theguardian.com/politics/2018/feb/12/theresa-may-committed-uk-foreign-aid-spending-pledge-oxfam>;

Giles Sheldrick, "Eight in ten Brits demand the Government use bloated foreign aid budget to help the NHS," *The Daily Express*, 9 January 2018, <https://www.express.co.uk/news/uk/901971/UK-foreign-aid-budget-help-nhs-crisis-exclusive-poll>.

policymaking, where multiple actors collaborate, multiple interests intersect, and multiple priorities compete, it is difficult to draw a sharp and precise answer. Nevertheless, in this thesis, I shall argue that the *primary* aim of the hostile environment policies is to appeal to domestic public opinion, rather than pursuing the goal of deterrence (or encouraging emigration). This is not to say that the goal of deterrence is *irrelevant*, nor that the government does not care *at all* about reducing net migration (indeed, it may be important to them), merely that those objectives are *subordinate* to the aim of courting public opinion.

My argument will not take the form of a neat, deductive, logical proof, deriving indubitable conclusions from undeniable premises. Instead, I will look to build my case holistically, with mutually reinforcing propositions working together to build an argument comprehensively.²⁵ I do not presuppose that any one point, or any point taken in isolation, will definitively prove my hypothesis, but I hope that the combined weight of these elements will be convincing.

The points I will be making to argue for this hypothesis are as follows:

- Many of the hostile environment policies are not new, and are mainly extensions of (or in some cases, reversions to) old UK government policy, demonstrating that in some cases, the ‘hostile environment’ is more an exercise in PR than a substantive new policy direction;

²⁵ Ernest Sosa, “The Raft and the Pyramid: Coherence versus Foundations in the Theory of Knowledge,” *Midwest Studies in Philosophy* 5, Vol 1 (1980):3-26.

- The Conservatives' main immigration pledge is to reduce net migration to the tens of thousands. By definition, this target cannot include undocumented migrant numbers, which are unmeasurable. There is no real standard of success for the hostile environment policy, which I will argue is indicative of 'symbolic policy making' as opposed to comprehensive, well-planned political strategy;
- Migration patterns to the UK, as well as what we know about the situations, attitudes, and motivations of those who stay in the UK with undocumented status, suggest that the policies adopted by the Home Office are unlikely to deter entry or induce emigration. The fact that the government chooses to enact the hostile environment anyway, implies an ulterior motive to the policy;
- The information pathways from the Home Office to those outside the UK are at worst non-existent, and at best inadequate. If the policies' target audience is unaware of their existence, they cannot reasonably be expected to be deterred, casting doubt on the notion that this is the policies' primary aim.

As previously noted, these points, taken in isolation, may seem unremarkable, but when considered collectively imply a political environment in which the public image aspect of the policy takes precedence over its objective outcome. I begin by outlining the hostile environment and who it affects. I then consider the human rights implications of the hostile environment, and why my research has importance within this field. I then seek to outline a conceptual framework and theory of analysis, by which

I will determine how to judge the role and intention of the policies. I will then analyse the hostile environment against this framework, using the arguments outlined above, to determine the role and intention of the hostile environment. I will conclude that while reducing migration in general and irregular migration in particular seems to be a legitimate goal of the British government, there is a large extent to which public perception of the policies is deemed more important, implying that the intended target audience is domestic voters holding anti-immigration views.

2. Methodology

This study primarily consisted of desk review of various primary and secondary resources. This included academic and scholarly works, studies and reports by third sector and governmental organisations, analysis of primary legislation and executive orders, and grey literature analysis.

I supplemented this with qualitative interviews, in order to obtain additional insights not covered in the literature or to expand on relevant themes. I interviewed eight former or current undocumented migrants regarding their experience of the hostile environment, their motivations for coming to the UK, and their awareness about deterrence provisions prior to arrival. I also interviewed one former civil servant, one former communications expert in the coalition government, and one author and former Liberal Democrat staffer, who together provided insights regarding the operations of government and the Coalition government in particular. I was unable to secure

interviews with current or former government ministers, a failure which constitutes a limitation in the extent to which strong conclusions can be drawn from my findings.

I conducted social media analysis of foreign embassy Facebook pages: I include a more thorough methodology of this process in Chapter 10.1.

I attempted to make a request for information on current information campaigns under the Freedom of Information Act 2000. Unfortunately, due to administrative issues outside of my control, the request will not be answered until after the publication date of this thesis. Again, this represents a limitation in my research. I discuss this limitation in more depth in Chapter 10.

3. What Is The Hostile Environment And Whom Does It Affect?

3.1 The development of the hostile environment

The concept of ‘undocumented migration’ did not really emerge until the 1920s and 30s, as states began to create official legal frameworks around entering and exiting their territory- Prior to this, movement between countries had been fairly free and

unregulated.²⁶ In the 1980s and 90s new legal regimes emerged that sought to “criminalise” certain forms of migration.²⁷ Thus, as Düvell puts it, “clandestine migration is not an independent social phenomenon; it exists only because it is socially, politically and legally constructed.”²⁸ The hostile environment therefore is part of a wider global trend over the past three decades, that seeks to criminalise, punish, and remove those determined to have no right to be in a given territory.

While it has become Theresa May’s flagship immigration policy, she did not invent the phrase “hostile environment.” In 2009, Labour’s Alan Ball (then Home Secretary) used it in a speech, and a Home Office report from February 2010 (while Labour was still in power) called to “make the UK a hostile environment for those that seek to break our laws or abuse our hospitality.”²⁹ What May did (first as Home Secretary from 2010 until 2016, and thereafter as Prime Minister) was to pivot this from a throwaway remark, into the main focus of government policy. The hostile environment is just that- an *environment*- and it is not limited to statutory legislation, but also encompasses executive instruction, enforcement campaigns, public relations campaigns, and so forth.

²⁶ Katherine Donato and Douglas Massey, “Twenty-First Century Globalization And Illegal Migration,” *The Annals of the American Academy of Political and Social Science*, Vol 666, No. 1 (14 June 2016): 7-26, 9;

Franck Düvell, “Clandestine migration in Europe,” *Social Science Information*, Vol. 47, No. 4 (1 December 2008): 479 – 497, 480.

²⁷ Ibid.

²⁸ Düvell, “Clandestine migration in Europe,” 480.

²⁹ Natasha Clark, “Whose Fault? Labour were first to suggest ‘hostile environment’ for immigrants, Emily Thornberry admits as she wades into Windrush row,” *The Sun*, 22 April 2018, <https://www.thesun.co.uk/news/6114549/emily-thornberry-admits-labour-were-first-to-suggest-hostile-environment-for-immigrants-as-she-wades-into-windrush-row/>.

The main legislative teeth of the hostile environment come from the Immigration Acts 2014 and 2016. These expansive pieces of legislation contain many provisions designed to make life difficult for undocumented migrants, including:

- Introducing civil penalties for landlords who rent premises to anybody without first checking their immigration status and “right to rent”.³⁰ This “right to rent” scheme was later extended in the 2016 Act to make it a *criminal* offence for a landlord to rent to an individual if he or she “knows or has reasonable cause to believe” that the individual has no documented status in the UK;³¹
- Charging those without regular status in the UK to use NHS services³² (although it must be noted that this is a realisation of powers previously granted in the National Health Service Act 2006).³³ The Department of Health adopted the Overseas Charging Regulations in 2015 which, along with various additional orders over time, have mandated NHS staff to determine eligibility for treatment through documentation checks and implement appropriate charges, or even refuse treatment in some circumstances;³⁴
- Forbidding banks from opening accounts for new customers without checking that the person has appropriate status in the UK;³⁵

³⁰ *UK Parliament*, “Immigration Act 2014,” Chapter 1

³¹ *UK Parliament*, “Immigration Act 2016”, Section 33A(3)

³² Immigration Act 2014, Section 39

³³ *UK Parliament*, “National Health Service Act 2006,” Section 175.

³⁴ *Department of Health*, “Guidance on implementing the overseas visitor charging regulations,” Internal DoH memo, May 2018, various pages.

³⁵ Immigration Act 2014, Section 40.

- Creating a new criminal offence of “illegal working” and lowering the bar for an employer to face criminal sanctions (while also raising the maximum prison sentence for employing someone without legal status): Whereas before an employer had to *be aware* that a worker had no documented status in order to face penalties, now they just have to have “reasonable cause”, forcing employers to be more stringent with documentation checks;³⁶
- Making it a criminal offence to drive a vehicle without legal status in the UK.³⁷

This list is by no means comprehensive, but as we can see, the main thrust of the hostile environment concerns creating or expanding incentives for private citizens to take on the role of immigration enforcement, denying services to those deemed to be in the UK irregularly. On top of this, an unwelcoming, hostile environment has been created by high-profile enforcement campaigns (such as the infamous “Go Home” vans, which served little effect other than to instil fear into migrants at great financial cost to the Home Office)³⁸, introducing a “deport first, appeal later” policy to restrict migrant’s rights to due process (which was overturned by the Supreme Court),³⁹ as well as increasing application fees and restricting appeal rights to make it more difficult for migrants to regularise their stay in the UK.⁴⁰ The hostile environment, then, is not

³⁶ Immigration Act 2016, Chapter 2.

³⁷ Immigration Act 2016, Section 43.

³⁸ Alan Travis, “‘Go home’ vans resulted in 11 people leaving Britain, says report,” *The Guardian*, 31 October 2013, <https://www.theguardian.com/uk-news/2013/oct/31/go-home-vans-11-leave-britain>.

³⁹ *BBC News*, “‘Deport first, appeal later’ policy ruled unlawful,” 14 June 2017, <https://www.bbc.com/news/uk-40272323>.

⁴⁰ Colin Yeo, “Above-inflation increase in immigration and nationality fees for 2018/19,” *Free Movement*, 4 April 2018, <https://www.freemovement.org.uk/increase-immigration-nationality-application-fees-2018-19/>;

Colin Yeo, “Fees for EU nationals and others appealing immigration decisions increase over 500% today,”

merely a collection of legislative restrictions that aim to stop undocumented migrants at various points of their journey into and within the UK, but rather an attempt to create a more insidious and extensive atmosphere of hostility, inhospitality, and division, making the UK simply an unpleasant place to live for these groups, and so deterring people from coming or inducing those present to leave.

3.2 “A hostile environment for all racial communities in the UK”? Who is affected by the hostile environment?

The hostile environment is aimed first and foremost at undocumented migrants, although its reach goes much further. “Undocumented migrants” are not a uniform category- rather it is a heterogeneous group comprising many different types of migrant. Papademetriou distinguishes four main categories of undocumented migrants:⁴¹

1. Undocumented or unauthorised entrants: Migrants who enter a territory clandestinely, that is, without detection or inspection by a border agent. In the context of the UK, this would include migrants who enter in the backs of lorries, or those who enter via the land border with Ireland.
2. Fraudulent entrants: Individuals who are inspected upon entry into another state, but gain admission by using fraudulent documents (for example, a

Free Movement, 10 October 2016, <https://www.freemovement.org.uk/government-confirms-fees-immigration-tribunal-hearings-will-skyrocket/>.

⁴¹ Demetrios G. Papademetriou, “The Global Struggle with Illegal Migration: No End in Sight,” *Migration Policy Institute*, 1 September 2005, <https://www.migrationpolicy.org/article/global-struggle-illegal-migration-no-end-sight>.

fake passport). They differ from unauthorised entrants in that they are subject to detection and inspection by a border agent, but the possession of a fraudulent document enables their entry.

3. Visa overstayers: Migrants who entered on a valid visa, but did not leave the country when the visa expired.

4. Visa violators: Migrants who hold a valid and unexpired visa, but have violated its terms. For example, someone in possession of a student visa who exceeds the number of hours that they are allowed to work per week.

Additionally, Finch and Cherti, drawing on Papademetriou, identify ‘refused asylum seekers’ as a fifth category.⁴² However, it must be noted that many of these categories may overlap: For example, many asylum seekers will have originally entered the country either clandestinely or with fraudulent documents. In terms of the way they are treated by and experience the immigration system though, it is perhaps analytically useful to treat them as distinct.

But while the hostile environment may be aimed ostensibly at undocumented migrants, its measures have further reach. In 2018, Tendayi Achiume, the UN Special Rapporteur on Racism, visited the UK, and was damning in her assessment of the hostile environment. She observed that “a hostile environment ostensibly created for, and formally restricted to, irregular immigrants is, in effect, a hostile environment for

⁴² Myriam Cherti and Tim Finch, “No Easy Options: Irregular Immigration in the UK,” *Institute for Public Policy Research*, April 2011, https://www.ippr.org/files/images/media/files/publication/2011/05/No%20Easy%20Options%20Apr2011_1837.pdf, 25.

all racial and ethnic communities and individuals in the UK.”⁴³ She argues that any policy that forces private citizens to take on immigration enforcement roles encourages a culture of suspicion against *anyone* perceived to be in the country irregularly, and this suspicion disproportionately falls on racial and ethnic minorities: In essence, the hostile environment necessitates and promotes racial profiling not just by government officials, but the public at large.

The recent “Windrush Scandal” is a case in point. In 2018 it emerged that migrants who had come to the UK from former colonies after the Second World War, were being denied basic services and even facing deportation, despite having legal status (although many, having been in the UK as long as 50 years, did not have the documentation to prove it).⁴⁴ Similarly, the campaign group the *Joint Council for the Welfare of Immigrants* found that nearly half of landlords admitted that they would now be less likely to rent to non-EU nationals.⁴⁵ Additionally, in a ‘mystery shopper’ scenario (in which researchers from various demographic groups applied for housing from private landlords), BME British citizens without a passport were 14% less likely to be given a property than white British citizens also without a passport- a result not replicated in a scenario where both applicants had passports:⁴⁶ This demonstrates that

⁴³ *Office of the High Commissioner for Human Rights*, “End of Mission Statement of the Special Rapporteur on Contemporary Forms of Racism, Racial Discrimination, Xenophobia and Related Intolerance at the Conclusion of Her Mission to the United Kingdom of Great Britain and Northern Ireland,” Accessed 8 July 2018,

<https://ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=23073&LangID=E>

⁴⁴ Elgot, “Theresa May’s ‘hostile environment’ at heart of Windrush scandal.”

⁴⁵ Chai Patel and Charlotte Peel, “Passport Please: The impact of the Right to Rent checks on migrants and ethnic minorities in England,” *Joint Council for the Welfare of Immigrants*, February 2017,

http://www.jcwi.org.uk/sites/default/files/2017-02/2017_02_13_JCWI%20Report_Passport%20Please.pdf, 7.

⁴⁶ Ibid.

the discrimination faced results directly from the checks necessitated by the ‘Right to Rent’ scheme. These cases are a clear vindication of Achiume’s warning, that a policy that forces the conduct of immigration enforcement out of the hands of border control agents will harm any minority group who do not immediately appear “native” enough to the privileged majority.

The hostile environment has been criticised by opposition MPs, parliamentary select committees, civil society actors, charities, UN organisations, and even NHS staff who have to implement the policies, with criticism ranging from: the fact it leads to human rights violations; the fact that it creates an atmosphere of suspicion against minorities (even those with a right to remain); the fact that it forces private citizens to abandon their duty of care or take up extra work outside of their contracts; and the fact that as a policy it seems to lack direction, purpose, regulation, and oversight.⁴⁷

It must however be noted that the hostile environment remains popular with the public at large. Despite public opinion being critical of the government’s handling of the Windrush Scandal, 82% of Brits still support policies requiring migrants to prove their legal status in order to get a job, 79% believe one should have to do so to register with a

⁴⁷ See for example: Committee on Economic, Social and Cultural Rights, “Concluding observations on the sixth periodic report of the United Kingdom of Great Britain and Northern Ireland,” United Nations, E/C.12/GBR/CO/6, 14 July 2016, paragraphs 55-56;

Peter Walker, “Labour would end ‘hostile environment’ policy, says Abbott,” *The Guardian*, 16 May 2018, <https://www.theguardian.com/uk-news/2018/may/16/labour-would-end-hostile-environment-immigration-policy-says-abbott-yarls-wood-brook-house>;

Fabien Cante, “Cross-party parliamentary committee strongly critical of ‘hostile environment’,” *Migrants Rights Network*, 16 January 2018, <https://migrantsrights.org.uk/blog/2018/01/16/cross-party-parliamentary-committee-strongly-critical-hostile-environment/>;

Denis Campbell and Patrick Butler, “NHS staff and managers condemn ‘passport before treatment’ plan,” *The Guardian*, 22 November 2016, <https://www.theguardian.com/society/2016/nov/22/nhs-staff-and-managers-condemn-passport-before-treatment-plan>.

GP, 76% agree in the case of opening a bank account, and 74% think it should be a requirement for renting property.⁴⁸ On a more general level, 71% of the public support the hostile environment in principle, with just 15% against it.⁴⁹

As a final caveat, many have interpreted the hostile environment to include policies that make life difficult for *all* migrants⁵⁰ (such as the aforementioned raising of legal barriers to appeal decisions, even for legal channels of migration), acting as a deterrent even to EU citizens and regular migrants, and thus lowering the net migration figures. While there is certainly merit in this interpretation, and given the broad scope and holistic nature of the hostile environment it seems an inevitability that it will target all categories of migrant, the narrower focus of my thesis, as well as the way that senior government figures such as May have identified and described the hostile environment themselves, means that I shall be directing my focus purely on those policies that address undocumented migration.

⁴⁸ Anthony Wells, “Where the public stands on immigration,” *YouGov*, 27 April 2018, <https://yougov.co.uk/news/2018/04/27/where-public-stands-immigration/>.

⁴⁹ *Ibid.*

⁵⁰ See, for example: Robert Wright, “Call to scrap ‘hostile environment policy’ towards immigrants,” *Financial Times*, 2 July 2018, <https://www.ft.com/content/09da22ce-7deb-11e8-bc55-50daf11b720d>.

4. The Hostile Environment as a Human Rights Issue

4.1 The Hostile Environment as a Breach of International Law

In July of 2016, the Committee on Economic, Social, and Cultural Rights (CESCR) published the results of their sixth periodic report on the United Kingdom. In this report, they criticised the British government for hostile environment policies that denied undocumented migrants access to basic healthcare,⁵¹ directly contravening obligations under, among other international instruments, Article 12 of the *International Covenant on Economic, Social and Cultural Rights*,⁵² and Article 28 of the *International Convention on the Protection of the Rights of All Migrant Workers*, which explicitly states that treatment “shall not be refused [to migrants] by reason of any irregularity with regard to stay or employment.”⁵³ The hostile environment’s provisions also contravene internationally legally mandated rights to work and housing, among others.⁵⁴

As previously mentioned, the hostile environment has been criticised by the UN Special Rapporteur on Racism, as well as civil society groups, for its disproportionate profiling of racial and ethnic minorities. The hostile environment therefore contravenes

⁵¹ Committee on Economic, Social and Cultural Rights, “Concluding observations on the sixth periodic report of the United Kingdom of Great Britain and Northern Ireland,” paragraphs 55-56.

⁵² The UN General Assembly, “International Covenant on Economic, Social and Cultural Rights,” General Assembly resolution 2200A (XXI), 16 December 1966, entry into force 3 January 1976, Article 12.

⁵³ *UN General Assembly*, “International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families,” General Assembly resolution 45/158, 18 December 1990, Article 28.

⁵⁴ ICESCR, Articles 6 and 11

multiple provisions of the *International Convention on the Elimination of All Forms of Racial Discrimination*, in which states parties pledge not just to promote racial equality, but to enact laws that promote racial tolerance and repeal laws that foster division and discriminatory attitudes in the public: “to encourage...means of eliminating barriers between races, and to discourage anything which tends to strengthen racial division.”⁵⁵

Additionally, as we will see in Chapter 9, for many individuals, they are either *unable* to return home due to violence or persecution, or *unwilling* due to having an established life and strong family and cultural ties in the UK. Therefore the hostile environment puts undocumented migrants in a no-win situation: Either leave the UK and sacrifice their right to asylum⁵⁶ or family life⁵⁷, or else choose to live subject to what many would describe as “degrading treatment”,⁵⁸ including the limitations on the right to work and healthcare rights listed previously.

⁵⁵ *UN General Assembly*, “International Convention on the Elimination of All Forms of Racial Discrimination,” General Assembly resolution 2106 (XX), 21 December 1965, entry into force 4 January 1969, Article 2.

⁵⁶ UN General Assembly, “Convention Relating to the Status of Refugees”, *United Nations*, Treaty Series, Volume 189, 28 July 1951, <http://www.refworld.org/docid/3be01b964.html>.

⁵⁷ *Council of Europe*, “European Convention for the Protection of Human Rights and Fundamental Freedoms, as amended by Protocols Nos. 11 and 14,” 4 November 1950, <http://www.refworld.org/docid/3ae6b3b04.html>, Article 8.

⁵⁸ *Ibid*, Article 3.

4.2 The Hostile Environment and Deterrence: Informed Choice and Migrant Agency

Where the discourse around the human rights implications of the hostile environment becomes especially prescient is given the rise of what Gammeltoft-Hansen and Tan call the “deterrence paradigm.”⁵⁹ While their discussion centres specifically on the notion of forced migration and asylum, it surely has relevance to the broader issue of irregular migration more generally- Indeed, Triandafyllidou and Dimitriadi note that due to the nature of mixed migration flows, “preventive strategies equally affect irregular migrants and asylum seekers. Differentiation in policies only exists for those lucky few who succeed in crossing [borders] and seeking protection”.⁶⁰

The deterrence paradigm is the trend in global politics whereby states reaffirm their commitment to human rights norms publicly (in this case, emphasising individuals’ *de jure* right to claim asylum), while enacting legislation that effectively restricts that right *de facto*.⁶¹ This may take the form of provisions that prevent physical entry into a territory (such as erecting a wall or enforcing carrier sanctions), or they may take the form of provisions that make a particular state unappealing to migrants, whether that be in absolute terms or relative to neighbouring states (such as reducing financial assistance to asylum seekers, or reducing application success rates). Either

⁵⁹ Thomas Gammeltoft-Hansen and Nikolas Feith Tan, “Beyond the Deterrence Paradigm in Global Refugee Policy,” *Suffolk Transnational Law Review* 39, No. 3 (2016): 637-649.

⁶⁰ Anna Triandafyllidou and Angeliki Dimitriadi, “Deterrence and Protection in the EU’s Migration Policy,” *The International Spectator* 49, No. 4 (2014): 146-162, DOI: 10.1080/03932729.2014.95628, 149.

⁶¹ Gammeltoft-Hansen and Tan, “Beyond the Deterrence Paradigm in Global Refugee Policy.”

way, the logic is that if a state manages to stop an asylum seeker before they have set foot on their soil (or ‘convinces’ them to leave ‘voluntarily’ before their claim is accepted), then they avoid breaching the norm of *non-refoulement*. *Non-refoulement* is the international legal principle most famously elucidated in the 1951 Refugee Convention, which forbids states from “expel[ling] or return[ing] a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion.”⁶² The deterrence paradigm seeks to circumvent a state’s legal obligations: After all, an asylum seeker cannot be ‘refouled’ if they were never under the protection or jurisdiction of the receiving state to begin with; Likewise, if they leave voluntarily, then the receiving state is not responsible for whatever may happen, as that individual has essentially ‘chosen’ to refole themselves.

There are both direct and indirect links here to the hostile environment. On a basic level, within the refugee regime, the hostile environment forms part of the UK’s asylum deterrence system: Once one’s case has been refused and one’s appeal rights exhausted, the hostile environment awaits. The government hopes that for many asylum seekers, especially those it deems to be making *spurious claims*, the risk of one’s case failing and oneself subsequently falling into this destitution will put many off coming in the first place.

For those asylum seekers already present within the UK, the hostile environment presents an additional human rights concern. While the principle of non-refoulement

⁶² *UN General Assembly*, “Convention Relating to the Status of Refugees,” Article 33.

ceases to apply if an asylum seeker repatriates themselves, this repatriation must be *voluntary*: A state violates an asylum seeker's human rights if it pushes or pressures them to seek repatriation even if their life would be at risk.⁶³ As discussed previously, part of the logic of the hostile environment is to induce those present in the UK to return to their countries of origin. Where this pressure applies to asylum seekers, the UK may be in breach of its international human rights obligations. While the main thrust of this thesis will be the deterrent nature of the hostile environment, it is worth remembering the myriad ways in which this policy affects lives of different individuals.

Beyond this though, it is important to realise that an inherent component in the logic of the deterrence paradigm, not just in the realm of asylum, but in all aspects of migration deterrence, is that in theory its provisions *should* never be realised. Or rather, deterrence policies involve creating a threat, a threat that those behind the policies hope will dissuade a target from performing an undesirable action *before* it ever needs to be used.

Consider the way that states stockpile nuclear weapons. Countries such as the US amass vast nuclear arsenals, in the hope of *detering* potential aggressors (for example, North Korea) from instigating an unprovoked strike. While the US possesses the means to inflict severe harm on North Korea, its leaders argued that it is not their intention to actually use the nuclear weapons: They merely exist to discourage undesirable behaviour, and indeed, should they ever need to be used, it would purely be because

⁶³ Jerry Vang, "Limitations Of The Customary International Principle Of Non-refoulement On Non-party States: Thailand Repatriates The Remaining Hmong-lao Regardless Of International Norms," *Wisconsin International Law Journal* 32, No. 2 (2014): 355–383, 373.

North Korea had acted first- in this instance, the US would not be at fault. North Korea knows the risks, knows what they need to do to avoid the risks, and therefore if they still choose to strike unilaterally, then the US can claim they have a legitimate right to retaliate without blame.

Similarly, the logic of deterrence policies is that they are there to do just that: to *deter*. In theory their provisions should never be executed, and if they are, then it is the fault of the migrant who has chosen to display the undesirable behaviour (entering the territory) that such the policy was implemented to prevent.

Why is this a human rights issue? Allowing anyone to experience destitution would ordinarily be a breach of a state's human rights obligations, but countries like the UK maintain that if someone has no legal status in their territory, then the way they should avoid destitution is not by receiving host state support, but by returning to their country of origin- a failure to do so represents a *choice* on the individual's part, and absolves the state of its rights obligations⁶⁴ (in much the same way that the US could try to argue that if North Korea attacks first, then they have *chosen* to risk the consequences of a US nuclear strike). By extension, although the hostile environment may necessitate severe breaches of its victims' human rights, then according to this logic those who suffer its effects have the potential to avoid this pain by leaving the UK voluntarily and returning to their country of origin to access services legally.⁶⁵ Concurrently, as a

⁶⁴ "R (W) v Croydon LBC [2007] EWCA Civ 266", and "R(Kimani) v Lambeth LBC [2003] EWCA Civ 1150", both cited in: *UK Home Office*, "Asylum support, section 4(2): policy and process," 16 February 2018, 13.

⁶⁵ I will discuss later why this is not necessarily an option for many undocumented migrants.

deterrence policy, the logic is that those outside the UK are aware of the hostile environment, know what they are getting themselves in for, and therefore should they enter and subsequently suffer its effects, the UK is not breaching any legal obligations.

However, crucial here is the concept that those outside the UK are aware of the effects and are making a rational calculation. According to Pickett and Roche, the theory behind deterrence relies on two fundamental assumptions: First, that “individuals weigh the perceived costs and benefits of crime⁶⁶ before offending, and then they choose to offend after calculating a net benefit of crime”; And second, that “there is a correlation between the actual (or the objective) risk of apprehension and punishment and individuals’ subjective beliefs about the risk of apprehension and punishment.”⁶⁷ This is to say that the logic of deterrence borrows heavily from rational choice theory: Individuals will make a rational cost-benefit calculation about whether to commit a prohibited action, and will decide to withhold that action where the risk of being caught and the severity of the punishment outweigh the potential gain to be had from committing that crime.

However, as Nagin points out, “the conclusion that crime decisions are affected by sanction risk perceptions is not a sufficient condition for concluding that policy can deter crime. Unless the perceptions themselves are manipulable by policy, the desired deterrent effect will not be achieved.”⁶⁸ This means that a deterrence policy cannot

⁶⁶ Pickett and Roche wrote about the criminal justice system specifically, but their work has relevance to all forms of deterrence.

⁶⁷ Justin Pickett and Sean Roche, “Arrested Development: Misguided Directions in Deterrence Theory and Policy,” *Criminology and Public Policy* 15, No. 3 (2016): 727-751, 728.

⁶⁸ Daniel Nagin, “Criminal Deterrence Research at the Outset of the Twenty-First Century,” *Crime and Justice* 23 (1998): 1-42, 5.

merely assume that ‘more severe punishments equals more deterrence’, unless we further build into the policy a means of affecting the way people *perceive* the punishment. I may very well be deterred from entering a country if I know that I will be denied access to non-emergency healthcare- but if I do not know that this is a potential punishment, then it will not factor into my decision-making process.

My research therefore has important ramifications for the concept of the hostile environment as a human rights issue. For the notion of deterrence policies as pre-emptively affecting decision-making relies on migrant agency and informed calculation. If a government prioritises its domestic political agenda over the goal of deterrence, and in doing so does not take all reasonable steps to spread news of the deterrence policy to audiences outside of its territory, then those who might wish not to experience the hostile environment will not be given a fair chance to avoid it. As one former asylum seeker told me, “[I]f I had known I’d be in this condition...I would have not come here at all.”⁶⁹ I will argue that the provisions in the hostile environment have not sufficiently been broadcast to the target audience, will not affect the target audience in the way that the logic of deterrence implies, and furthermore the government should be aware of this, therefore there are significant doubts to which it can work as a deterrent policy.

While some may point to the notion of the hostile environment as a policy designed to induce those already living with undocumented status in the UK to leave, I argue that given the words of Theresa May, the chief architect of the policy, that “we don’t want...a situation where people think that they can come here and overstay

⁶⁹ Interview with Nigerian migrant, 11 May 2018.

because they're able to access everything they need", this policy has at least in part a deterrent intention, and therefore the concerns brought up here apply to a significant number of individuals whom it affects. A deterrence policy that has no reasonable prospect of deterring entry, demonstrated at the very least through a credible information campaign to raise awareness and increase perception of its provisions, is deterrent in name only, and subsequently a government cannot be absolved of its human rights responsibilities merely by calling it a deterrent.

5. How Do We Judge The Role And Intention Of A Policy?

5.1 The problem with using outcomes as an indicator of intent

There is a famous story- perhaps an urban legend- from colonial-era India, that says that the British authorities were at one point experiencing an epidemic of venomous cobras. In an attempt to be rid of these pests, they started offering a small financial reward each time someone presented to the authorities the body of a cobra that they had killed. For a while, this policy worked well, with Indians catching and killing cobras, and the British paying them for this service. After a short while, however, enterprising locals realised that they could simply breed the cobras themselves, kill

these snakes, bring their bodies to the authorities, and make huge profits. Eventually, the British authorities cottoned on to what was happening and, not having any way to distinguish wild cobras from bred cobras, were forced to abandon the scheme. The local cobra-breeders now had no reason to keep the snakes, and released them into the wild. Thus, a policy that was created to reduce cobra numbers ended up leading to a vast increase in their population.⁷⁰

What this story shows is that a bad policy is not necessarily demonstrative of a competing or alternative priority, and that outcomes do not necessarily indicate intentions. In the case above, the British authorities truly did want fewer snakes in India- the fact that they chose to pursue this goal with an ill-thought-out, counterproductive strategy tells us nothing about the role and intention of the policy they implemented. As Bovens et al note, “policy scientists have documented time and time again that policy makers fail to accomplish their objectives; that policies can have serious unintended effects”.⁷¹

When analysing immigration policy then, I will try, as much as feasible or practicable, to avoid forming my judgements based on outcomes. Whether a specific policy does indeed reduce immigration does not necessarily mean that reducing immigration was the primary purpose of that policy: A policy to raise money for the Treasury by turning 90% of the UK into a toxic waste dump would likely lower

⁷⁰ Dale Hartley, “The Cobra Effect: Good Intentions, Perverse Outcomes,” *Psychology Today*, 8 October 2016, <https://www.psychologytoday.com/us/blog/machiavellians-gulling-the-rubes/201610/the-cobra-effect-good-intentions-perverse-outcomes>.

⁷¹ Mark Bovens, Paul Hart, and B. Guy Peters, *Success and Failure in Public Governance- A Comparative Analysis*, (Cheltenham: Edward Elgar Publishing Limited, 2001), 5.

immigration rates, but this does not make it an immigration policy *per se*. Likewise, there are situations in which a particular restrictive policy actually leads to more migrants coming, a la the ‘cobra effect’: For example, Cherti and Finch found that for some Nigerians, tightening of visa restrictions by the UK government was causing frustration, making them think that legal channels of migration were impossible, and subsequently convincing them to pursue irregular channels instead.⁷²

This approach also prevents issues arising from cases where two phenomena have opposite effects or cancel each other out. Suppose a government wanted to reduce irregular migration by restricting access to healthcare, and this caused 5,000 potential migrants to actively, reflexively decide not to come. But what if the country experienced a concurrent economic boom, making it more appealing, leading to 10,000 *different* migrants deciding to enter? In reality, the government’s policy was a success, and in the counterfactual scenario where it was not implemented, net migration was 5,000 higher; but if we focus on raw numbers, this is very hard to see. The myriad factors that make up a state’s immigration policy regime means that simple raw arrival number data tells us little about the role and intention played by any policy considered in isolation.

⁷² Cherti and Finch, “No Easy Options,” 72.

5.2. A Procedural Approach to Policy Analysis

5.2.1. *The Policy Wheel as an Idealised Form of Policy Making*

Therefore, when analysing these policies, my focus will be more concerned with procedure than outcome *per se*. To do this, I will be focusing on how the British government ordinarily creates effective policy. One former senior civil servant told me that when creating new policies, ministers will set broad direction, outlining what they would like to happen in terms of achievement and attainment, and then effective policy will be created primarily by civil servants through adherence to the ‘policy wheel’.⁷³



⁷³ Interview with former British civil servant, 26 June 2018.

The policy wheel contains six portions:

1. Objectives
2. Review of the current situation
3. Research
4. Solutions
5. Implementation
6. Review

The objective is perhaps the simplest part: Officials ask themselves, “What are we trying to achieve?” Targets are set, largely reflecting the direct orders from the ministers themselves. These guide all subsequent action: As the interviewee told me, the target to reduce net migration “coloured everything we did.”⁷⁴

Then, officials review the current situation, asking, “What is preventing us, within the current paradigm, from achieving those objectives?”⁷⁵ Identifying barriers allows for better policy creation. It may be that legal or executive institutions are lacking, or they may be existent but being implemented inadequately.

Having identified the gaps in the current regime, one then undertakes research to try and resolve them. This may involve reading academic papers or examining case studies from other countries to see what other ideas have been suggested or

⁷⁴ Ibid.

⁷⁵ Ibid.

implemented elsewhere to solve similar problems, or it may involve consultation with stakeholders who have knowledge of the area under consideration.

Once the officials have a strong grasp of the issue area at hand, they come up with solutions. These could be original, but they are often copied from academic research or other countries' existing practices.

After this follows the implementation stage, where a policy will be rolled out, either universally or as part of a pilot scheme.

Finally, extensive review will be undertaken, to ensure that the new policy is effective at meeting the goals outlined in the objectives. Then, the process repeats- either starting from scratch if the policy fails, or building on prior success where relevant.

5.2.2. Criticisms of the Policy Wheel as an Accurate Depiction of Policy Making

Some may argue that this view of policy making is too simplistic- That it fails to appreciate how policy challenges today are, to use Rittel and Webber's terminology, "wicked" problems (in contrast to "tame" ones).⁷⁶ Rittel and Webber argued that prior to

⁷⁶ Horst W. J. Rittel and Melvin M. Webber, "Dilemmas in a General Theory of Planning," *Policy Sciences* 4, No. 2 (June 1973): 155-169.

the 20th century, policy makers were tasked with solving pretty basic social problems, which would tend to have simple solutions. This created an illusion that policy problems could be solved by the scientific method, with policy makers seeing a problem, strategising how best to solve it in the most efficient way, then evaluating the success of this measure.

However, as society progressed, it “became more heterogeneous and pluralistic in terms of culture, values, concerns and lifestyles, and this made public policy problems ‘wicked’, i.e., lacking clear and widely agreed definition and objectives, and having many stakeholders with different and heterogeneous problem views, values and concerns.”⁷⁷ These wicked problems “do not have clear and widely agreed definitions and objectives that can be adopted as criteria for evaluating possible solutions.”⁷⁸ This is to say that wicked problems cannot be understood as having ‘correct’ or ‘incorrect’ solutions, merely good or bad ones within a given subjective value system.⁷⁹ Everyone will have different opinions on the cause of a problem, and different opinions on the best solution.⁸⁰ To Rittel and Webber, then, the policy wheel would be nothing more than a rhetorical tool, adopting the pretence that policy is made through the scientific method, but ignoring the fact that the social problems of today will rarely have an ‘ideal’ solution derived from logical assessment of facts and methodical calculation of cause and effect.

⁷⁷ Enrico Ferro, Euripidis N. Loukis, Yannis Charalabidis, Michele Osella, “Policy making 2.0: From theory to practice,” *Government Information Quarterly* 30, Issue 4, (October 2013): 359-368, 360.

⁷⁸ Ibid.

⁷⁹ Rittel and Webber, “Dilemmas in a General Theory of Planning,” 162.

⁸⁰ Ibid, 161.

Hallsworth offers empirical evidence that compounds Rittel and Webber's arguments and gives reason to reject the idea that the policy wheel is a guiding force in British policy making. Through interviews with civil servants, he argues that the model does not reflect how policy is created in reality: Policy does not evolve in discrete stages- rather problems and solutions often emerge together;⁸¹ Policy making is often reactive, with news cycles being as much a reason to adopt a policy at a certain time as a rigorous framework;⁸² And the effects of policies are often indirect, diffuse, and take time to appear, meaning the evaluative mechanism will not give the full picture.⁸³

5.2.3. The Importance of Evidence Based Policy Making in the British Context

While the above criticisms have validity, I want to resist departing from at least a vague conception of the policy wheel's spokes when analysing government policy. To understand why, it will be prudent to delve deeper into British policy making in the last two decades.

When Labour came to power in 1997, they implemented a number of civil service reforms that firmly entrenched the concepts of Evidence Based Policy Making (EBPM)

⁸¹ Michael Hallsworth, "Policy making in the real world," *Institute for Government*, April 2011, <https://www.instituteforgovernment.org.uk/sites/default/files/publications/Policy%20making%20in%20the%20real%20world.pdf>, 6.

⁸² Ibid.

⁸³ Ibid.

and so-called ‘auditing culture’.⁸⁴ This involved a commitment to utilising as much evidence as possible throughout the process, the thinking being that this would lead to better policies and outcomes.⁸⁵ Auditing culture involved setting targets and then implementing an increasing number of tests and assessments to ensure that these targets were being met.⁸⁶ Although there were some changes when the Coalition government took power in 2010, a firm commitment to EBPM remained.⁸⁷

Andrews (himself a former minister in the Welsh administration) notes that a variant of the aforementioned policy wheel is still official Treasury guidance, and goes as far as to say that “in practice, proof of evidence is largely normative now in governmental policy-making and requirements of proof of evidence are built into the processes of government.”⁸⁸ Since “stubborn persistence, relentless monotony, attention to detail and glorying in routine are vastly underestimated in the literature on government and political history,”⁸⁹ Andrews argues that a fixation on the rare cases of evidence-free policy making, without studying routine and consistent patterns of

⁸⁴ Robert Geyer, “Can Complexity Move UK Policy beyond ‘Evidence-Based Policy Making’ and the ‘Audit Culture’? Applying a ‘Complexity Cascade’ to Education and Health Policy,” *Political Studies* 60, (2012): 20-43, doi: 10.1111/j.1467-9248.2011.00903.x, 20.

⁸⁵ Ibid, 22.

⁸⁶ Ibid.

⁸⁷ See: Geyer, “Can Complexity Move UK Policy beyond ‘Evidence-Based Policy Making’ and the ‘Audit Culture’?”, 20;

Leighton Andrews, “How can we demonstrate the public value of evidence-based policy making when government ministers declare that the people ‘have had enough of experts’?”, *Palgrave Communications* 3, Article 11, (31 October 2017), DOI: 10.1057/s41599-017-0013-4;

Partos, “No immigrants, no evidence?”, 12.

⁸⁸ Andrews, “How can we demonstrate the public value of evidence-based policy making when government ministers declare that the people ‘have had enough of experts’?”.

⁸⁹ Michael Barber, *Instruction to Deliver*, (London: Politico’s, 2007), 111.

behaviour, disguises the fact that policy makers utilising evidence is largely standard practice even today.⁹⁰

Given the ubiquity of EBPM in British government, and the fact that it is a stated aim of the system, it would be foolish to assert that the policy wheel method of analysing good governance should be disregarded entirely. The revelation that the Home Office had ‘deportation targets’ serves as evidence that even in the field of immigration, targets and monitoring form a basis of policy making.⁹¹ The criticisms outlined certainly have validity, but only in terms of specificities in the creative process. For example, one could argue that immigration is a ‘wicked problem’- with different stakeholders, interest groups, and minorities differing on what they perceive to be the issues, the solutions, and acceptable courses of action. But once the value-paradigm has been chosen by the policy maker, Rittel and Webber do not necessarily advocate for a departure from a method of policy making that relies on evidence, scrutiny, targets, and auditing- merely that what these stages consist of will differ depending on the stated aims, which are subjective. The criticisms listed by Hallsworth might in fact be demonstrative of a deficiency in the system, rather than a reason to reject this mode of analysis completely. Depending on the reason for the departure from EBPM, this may in fact reinforce my argument.

⁹⁰ Andrews, “How can we demonstrate the public value of evidence-based policy making when government ministers declare that the people ‘have had enough of experts’?”.

⁹¹ Heather Stewart, Amelia Gentleman, and Nick Hopkins, “Amber Rudd resigns hours after Guardian publishes deportation targets letter,” *The Guardian*, 30 April 2018, <https://www.theguardian.com/politics/2018/apr/29/amber-rudd-resigns-as-home-secretary-after-windrush-scandal>.

5.2.4. Intentional policy as good policy

Even if we acknowledge limitations in theory and in practice with the policy wheel, appreciating that it represents an idealised form of policy making that may not necessarily encapsulate an exact reflection of reality, a good policy must still have a clear end goal, an identifiable conception of the causal mechanisms that need to be invoked to bring about that end goal, and a method of determining the extent to which that end goal has been achieved. Without these, we do not have a rigorous and well-planned policy- we have wishful fantasy.

When trying to judge the balance of a policy between genuine targeted outcomes and cynical electioneering then, it will be prudent to establish the extent to which it can fit within this framework: If a policy is serious about its aim to reduce net migration, we would expect to find evidence of planning, quality research to ensure success, and extensive review. It is along these key axes that I will assess the extent to which the hostile environment displays attributes of a well-devised and well-executed policy intended to bring about the specific targeted outcome of reducing undocumented migration.

6. The Theoretical Framework: Political Marketing, Symbolic Policy, And Legislative Output

6.1. Political Marketing: Parties as Brands

Having established a standard for assessing the degree to which a policy appears well-planned and geared towards a specified goal, we also need to determine signs that this is not the case, and explore the reasons why a party may implement policies that have an alternative priority to the one stated: In short, how and why would parties adopt policies to win votes rather than bring about the stated target?

Retaining a focus on the concept of political marketing will allow a clearer picture of how governments use policy to appeal to voters. Hughes and Dann define political marketing as “a set of activities, processes or political institutions used by political organisations, candidates and individuals to create, communicate, deliver and exchange promises of value with voterconsumers, political party stakeholders and society at large.”⁹² It must be remembered that while many principles of corporate marketing can be applied to political marketing, and while on a theoretical level there are parallels to be drawn (e.g., the fact that political parties ‘compete’ to ‘sell’ their vision to the

⁹² Andrew Hughes and Stephen Dann, “Political Marketing and Stakeholder Engagement,” *Marketing Theory* 9, No. 2 (2009): 243-256, 244.

electorate), due to the fundamental differences between political parties and business, political marketing can only make sense with an understanding of political science.⁹³

Implicit in Hughes and Dann's definition however are some important assumptions that are crucial for my analysis. First, borrowing from the world of commercial marketing, Hughes and Dann liken voters to consumers, who exchange their "time, effort, votes or cash" for "direct value" - that is, outcomes that are in their interest or perceived interest.⁹⁴ Even in the 1960s, Kotler and Levy were noting that political "candidates are marketed as well as soap."⁹⁵ In this sense then, political campaigns are based on a paradigm similar to a commercial market transaction: Candidates and parties present their best qualities, try to convince the electorate how they will improve their lives, and also argue why they are a superior 'product' to their rivals; The voterconsumer, if suitably convinced, will 'buy into' this vision- albeit exchanging their vote rather than any cash.

A further notable aspect of Hughes and Dann's definition is that the act of marketing itself is based on more than running some adverts or coming up with a memorable logo. It comprises "a set of activities, processes or political institutions." A political party can brand itself not just by the running of political adverts, but by the rhetoric of its members, the way it approaches certain policy issues, and the way it

⁹³ For a discussion on what these differences are, see: Jennifer Lees-Marshment, *Political Marketing: Principles and Applications* (London and New York, Routledge: 2009), 26.

⁹⁴ Hughes and Dann, "Political Marketing and Stakeholder Engagement," 248.

⁹⁵ Philip Kotler and Sidney J. Levy, "Broadening the Concept of Marketing," *Journal of Marketing* 33, No. 1 (January 1969): 10-15, 10.

responds to the policies of its rivals. In short, how a party markets itself encompasses not simply its immediate aesthetical endeavours, but its actions and structures too.

This observation has practical relevance when we consider the tactics that the Conservatives might use to brand themselves as the party tough on immigration. Adams et al found that, far from electorates taking keen note of a party's individual policies (such as those contained within a manifesto), a party's policy changes from one election to the next did not affect the way that party's political position was viewed on a left-right axis, it did not cause its supporters to adjust their own left-right self-identification, and it did not cause voters to abandon one party for another that more closely aligned with their own left-right allegiance: In short, they found very little evidence that a party's policy pledges in the run up to an election affected voter behaviour in any meaningful sense.⁹⁶

What they found instead was that “voters react strongly to their *perceptions* of parties' Left-Right shifts but not to parties' actual shifts”⁹⁷ (emphasis added). For example, political commentator Stephen Bush notes that current labour leader Jeremy Corbyn is viewed by many of the ‘New Labour’ faction in the party as a left-wing radical, while many of his supporters viewed his predecessor, Ed Miliband as too right-wing to support, despite their policy agenda being identical on a host of the most important

⁹⁶ James Adams, Lawrence Ezrow and Zeynep Somer-Topcu, “Is Anybody Listening? Evidence That Voters Do Not Respond to European Parties' Policy Statements During Election,” *American Journal of Political Science* 55, No. 2 (April 2011): 370-382.

⁹⁷ *Ibid*, 378.

issues.⁹⁸ This shows that the way leaders *present* their issues matters a great deal- Corbyn has empowered more youthful strains of the party, embraced trade unionism, and used confrontational rhetoric when addressing corporate interests, things that Miliband was more hesitant to do.

The findings of Adams et al therefore indicate that to see how the Conservatives might use immigration policy as a political tool, we need to look beyond explicit pledges in the manifestos. Within the 2010 manifesto, there is scant reference to specifics of immigration policy beyond the pledge to cut overall levels, which would back up the notion that this is not the means by which the party is looking to cultivate its brand.

Adams et al stress that their “findings do not support the sweeping conclusion that European political parties cannot make successful policy based appeals to voters,”⁹⁹ just that this policy appeal will most likely not be based off those specific policies contained in manifestos. Erikson et al show that legislative activity is an effective, policy-oriented method of influencing voter behaviour.¹⁰⁰ A party that votes in favour of lots of immigration policy will be viewed as taking immigration seriously, regardless of the content of that policy.

⁹⁸ Stephen Bush, “Far from being a left-wing radical, Jeremy Corbyn is slouching towards Milibandism,” *New Statesman*, 30 March 2017, <https://www.newstatesman.com/politics/uk/2017/03/far-being-left-wing-radical-jeremy-corbyn-slouching-towards-milibandism>.

⁹⁹ Adams, Ezrow and Somer-Topcu, “Is Anybody Listening?,” 380.

¹⁰⁰ Robert Erikson et al, *The Macro Polity*, 339

6.2. Symbolic Policy Making

Slaven and Boswell argue that it is common to view policy making in the field of immigration- and especially in the field of irregular migration- as ‘symbolic’: using “cosmetic policy adjustments to signal values and intent, rather than substantive measures to steer the object of intervention.”¹⁰¹ They note that often these policies are more an ‘expressive’ form of political intervention than an ‘instrumental’ one: “While instrumental interventions are consciously aimed at steering the behaviour or effects of target populations [in this case irregular immigrants], symbolic or expressive interventions are designed to signal to an audience that the government is committed to certain values or goals.”¹⁰² Furthermore, they do not deny that symbolic policy making may produce “substantive effects...on the populations that are identified as the object of such interventions”, merely that they *primarily* serve to “signal commitment to the audience, rather than to affect the object of intervention.”¹⁰³

Why would governments do this? Slaven and Boswell identify three main theories: Manipulation, compensation, and adaptation.

A theory of **manipulation** suggests that governments adopt symbolic policies to affect political narratives, either to portray themselves in a positive light, or by making a certain issue more emotive so that there will be more public support for subsequent policies addressing it. As Sears says, “Controlling the public agenda is required in order

¹⁰¹ Christina Boswell and Mike Slaven, “Why symbolise control? Irregular migration to the UK and symbolic policy-making in the 1960s,” *Journal of Ethnic and Migration Studies* (2018), 1.

¹⁰² Ibid, 3.

¹⁰³ Ibid.

to control the symbolic meaning of an attitude object [be that a political party or a policy target]. Such control is politically consequential both in influencing overall public support for the object and in influencing which [emotional] predisposition it evokes.”¹⁰⁴

Compensation is the act of using symbolic policy making to disguise counteractive instrumental policy. While a domestic public may demand more restrictive immigration policy, interest groups, client politics, economic factors, moral considerations, and legal barriers may all prevent a government from pursuing such restrictions in practice.¹⁰⁵ Therefore symbolic policies may be implemented to assuage public fears about immigration, while policy in practice remains expansionary.¹⁰⁶

Adaptation involves adopting policies that may sit well with the public, in spite of a policymaker’s better judgement. It may be the case that a political party has a genuine desire to reduce immigration, but that “public demands are not just for ‘restriction’ generally but for specific types of interventions,” that may appear logical to the public, but in reality diverge from what the policymaker understands would truly be most effective.¹⁰⁷ Therefore symbolic policy serves as a signalling mechanism, to indicate to voters that their specific concerns are being addressed, even if that differs from policy that would have substantive instrumental effects.

¹⁰⁴ David Sears, “The Role of Affect in Symbolic Politics,” in *Citizens and Politics: Perspectives from Political Psychology*, ed James H. Kuklinski, (Cambridge: Cambridge University Press, 2001), 14-40, 33.

¹⁰⁵ Christian Joppke, “Why Liberal States Accept Unwanted Immigration,” *World Politics* 50, Number (January 1998): 266-293.

¹⁰⁶ Boswell and Slaven, “Why symbolise control?,” 4.

¹⁰⁷ Ibid, 5.

Given Theresa May's well-documented "obsession" with reaching net migration targets,¹⁰⁸ it is obvious that the Conservatives are not pursuing symbolic policies to disguise more liberal actualities of immigration. And given long standing public opinion against immigration which predates the Conservatives' tenure, as well as restrictive immigration policies emerging coincidentally with a rise in UKIP's support levels, the adaptive model seems more likely than the manipulation model. I would argue that the Conservatives adopt policies that may not make total sense causally or logically, but appeal to a public sense of what *ought* to be done.

Marsh argues that in different cultural and historic contexts, societies' definitions of what constitutes a crime are related to what *they* perceive as a threat within their particular social setting, and they will legislate accordingly, regardless of the objectivity or actuality of such concerns across different social contexts.¹⁰⁹ As the general population increasingly perceives undocumented migration as a societal threat, there becomes increasing pressure on legislatures to criminalise it and implement new laws to emphasise this criminalisation. This pressure exists independently of the objectivity of the threat, which explains why politicians may be so willing to follow the adaptive model of symbolic policy making: The policies created address the constructed threat rather than objective reality. That is to say that if, for example, the public perceives that immigrants represent a threat to services such as the NHS, the government will want to

¹⁰⁸ *BBC News*, "Net Migration up to 298,000 as Conservative target missed," 26 February 2015, <https://www.bbc.com/news/uk-politics-31638174>.

¹⁰⁹ Ian Marsh, *Theories of Crime* (London and New York: Routledge, 2006), 12.

take measures to address this, to publicly reassure voters, despite the fact that evidence shows the threat to be overstated.¹¹⁰

Adopting symbolic policy rather than instrumental policy also makes sense given the specifics of the UK context and voter demographics. I have already stated how part of the reason why the Conservatives adopted more restrictive immigration policies has been the threat of far-right encroachment, especially that of UKIP. If we take UKIP's vote share as a proxy indicator for anti-immigrant sentiment,¹¹¹ then we see that it is highest where there are the fewest immigrants.¹¹² There is also data to suggest that the public believes that a quarter of the population are foreign-born, when in reality the number is closer to 13%.¹¹³ Where the public's estimation of a certain population's prevalence in society is overstated by nearly 100%, and where the people who demand a policy response are those who have the least contact with the target group, then it is reasonable to suggest that the British public's perception of immigration levels and impact will not be perfectly responsive to changes over time. Would a 1% reduction in migrant stock be noticed by a public who are already overstating the population by nearly 100%? This is to say that a government can most likely achieve as much electoral success by addressing migration *symbolically*, giving the impression that *something is*

¹¹⁰ George Eaton, "How much does "health tourism" really cost the NHS? It's not £2bn," *New Statesman*, 22 October 2013, <https://www.newstatesman.com/politics/2013/10/how-much-does-health-tourism-really-cost-nhs-its-not-2bn>.

¹¹¹ I appreciate that this is not a perfect measure, but I believe it is good enough for the present purposes.

¹¹² Laurence Dodds and Raziye Akkoc, "Mapped: where is Ukip's support strongest? Where there are no immigrants," *The Telegraph*, 17 April 2015, <https://www.telegraph.co.uk/news/politics/ukip/11539388/Mapped-where-is-Ukips-support-strongest-Where-there-are-no-immigrants.html>.

¹¹³ George Arnett and Alberto Nardelli, "Today's key fact: you are probably wrong about almost everything," *The Guardian*, 29 October 2014, <https://www.theguardian.com/news/datablog/2014/oct/29/todays-key-fact-you-are-probably-wrong-about-almost-everything>.

being done, as they could by implementing practical measures with demonstrable outcomes.

6.3. The Theoretical Framework Stated

Combining these observations together, a theoretical framework emerges. The hostile environment represents a bundle of policies that are presented to the electorate as part of the Conservative's 'brand', to market their party, with the hope that voters who share an aversion to immigration will prefer the Conservatives to their rivals. While reducing numbers may be a goal, the seemingly endless raft of new laws, regulations, and executive instructions may be indicative of a party trying to cultivate an image of being harsh on immigration that appeals to public sentiment. What this means is that while the Home Affairs Select Committee may criticise "the complexity of the [immigration] rules and the frequency with which they change"¹¹⁴ (for example, during her tenure as Home Secretary Theresa May implemented 45,000 changes to the Immigration Rules)¹¹⁵, this may be a deliberate tactic by the government. In order to create an image that the Conservatives are the party committed to being tough on immigration, it is important that the news cycle is regularly filled with stories about the Conservatives taking new steps to tackle the 'problem'. This necessitates frequent, and

¹¹⁴ Home Affairs Committee, "Home Office Delivery of Brexit: Immigration," Third Report of Session 2017-19, *House of Commons*, 7 February 2018, <https://publications.parliament.uk/pa/cm201719/cmselect/cmhaff/421/421.pdf>, para 73.

¹¹⁵ *Liberty*, "Campaigning on the Immigration Act 2016," Accessed 16 July 2018, <https://www.libertyhumanrights.org.uk/campaigning/immigration-act-2016>.

increasingly complex and intricate, immigration rules to be created, regardless of their likelihood of success: What matters is the public's perception that *something is being done*. In this sense then, the hostile environment represents *symbolic policy making*: While reduction of immigration may be a goal, it is far more important to create policies that appeal to public sentiments and give the impression that their specific concerns are being addressed.

In the following chapters I look to investigate this theory by examining the hostile environment in more depth.

7. Is The Hostile Environment A Departure From What Came Before?

I have previously noted how, to some extent, the Conservative's stance on immigration was influenced by a desire to stand in contrast to the Labour government's at the time.¹¹⁶ Regarding the theoretical framework outlined above, it is crucial that the Conservatives *market* themselves as being tougher on immigration, and churn out legislation to support this image. But to what extent does the hostile environment actually mark a qualitative- as opposed to a merely rhetorical- shift away from policy

¹¹⁶ Smith, "Towards consensus?", 423.

that came before? If the Conservatives adopt policies indistinguishable from those of the previous regime, but market them differently, this may indicate a conscious prioritisation of public image. In other words, to what extent is the hostile environment symbolic?

For all the condemnation of the hostile environment by Labour MPs, during Blair and Brown's tenures many near-identical policies were in place, either introduced by their governments, or at least not repealed.

The ability to charge non-permanent residents for healthcare was introduced in the NHS Act 1977 and subsequently consolidated in the NHS Act 2006.¹¹⁷ What the Conservatives have changed is to apply these rules more stringently, and introduce an executive mandate to check eligibility for non-emergency healthcare *prior* to treatment, rather than afterwards, and refuse to instigate if necessary. Of course, this has huge implications for someone who might prefer acquiring debt to an untreated tumour, for instance. But in terms of actual *entitlement*, the Conservative government has changed very little.

Regarding employment law, the Immigration Act 2016 introduced a criminal offence of illegal working, which, among other things, allows the government to confiscate wages as 'proceeds of a crime.'¹¹⁸ Yet from the employer's end, while the

¹¹⁷ *Department of Health*, "Review of access to the NHS by foreign nationals," February 2010, http://webarchive.nationalarchives.gov.uk/20130105143919/http://www.dh.gov.uk/prod_consum_dh/groups/dh_digitalassets/@dh/@en/documents/digitalasset/dh_113243.pdf, 6.

¹¹⁸ Sophie Barrett-Brown, "Lexis PSL: Immigration Act 2016- illegal working and the lawful employment of workers," *Laura Devine Solicitors*, 28 June 2016, <https://www.lauradevine.com/news-item/lexis-psl-immigration-act-2016-illegal-working-and-the-lawful-employment-of-workers>.

Immigration Act 2016 toughened civil sanctions for employing undocumented workers, and lowered the burden of proof required for an employer to be criminally liable,¹¹⁹ the substance of the law- that employers are required to check that workers have documented status before employment begins- is a measure introduced in the Immigration Act 2006,¹²⁰ while the classification of the employment of undocumented migrants as a criminal offence dates back to 1996.¹²¹

Other parts of the hostile environment are little more than rhetorical flourishes, not substantive new policy. For example, in 2012 David Cameron announced plans to publish the nationality of benefits claimants for the first time, a move employment minister Chris Grayling attributed to a need to curb “benefit tourism.”¹²² Admittedly this was accompanied by piecemeal restrictions of benefits entitlements for EU nationals, although this is a group with no right to claim benefits without prospect of future employment anyway. But the report actually confirmed that foreign-born people living in the UK made up just 6.4% of total claimants, were less than half as likely as British nationals to claim benefits (7% of the total population versus 17%), over half of those ‘foreign born’ had become British citizens before claiming benefits (not to mention those who had regularised their stay through other means), and just 2% were not found to definitely have the right to claim benefits (although this could equally be attributed to

¹¹⁹ Before, an employer had to be *aware* the person was undocumented; now, they are criminally liable if they have failed to carry out adequate documentation checks.

¹²⁰ *UK Parliament*, “Immigration, Asylum, and Nationality Act 2016”, Section 15.

¹²¹ *UK Parliament*, “Asylum and Immigration Act 1996”, Section 8(1).

¹²² Tim Bale and Rebecca Partos, “Immigration and asylum policy under Cameron’s Conservatives,” *British Politics* 10, No. 2 (1 June 2015): 169-184, 173.

incomplete data or administrative mistakes).¹²³ Non-EEA nationals with temporary leave to remain, and especially undocumented migrants, have no right to claim benefits in the first place. While restrictions to EU migrants' benefit entitlements are conceivably one way of reducing net migration, EU migrants (even those from the so-called EU-8 countries that ascended after 2004) are net contributors to the UK, and evidence suggests that welfare is not a driving factor in migration from the EU.¹²⁴ As David Cameron tried to negotiate further restrictions of migrants' benefit entitlements in the run up to the 2016 EU Referendum, Portes commented that, "no serious analyst, inside or outside the UK government, thinks the impacts will be significant," noting furthermore that the British government had by its own admission failed to collect data demonstrating what impact EU nationals had had on the benefits system.¹²⁵ This meant that the Conservatives had no real idea whether the 'problem' they were trying to address even existed.

What are we to make of this then? Given the general impotence of welfare restrictions on EEA arrivals numbers, plus the fact that non-EEA migrants cannot claim benefits until they have permanent residency, then why publish the nationalities of benefit claimants? The mere act of publication achieves nothing, other than to single one group out for inspection, sow division, and draw attention to further welfare reform,

¹²³ *BBC News*, "Migrants on work-related benefits study published," 20 January 2012, <https://www.bbc.com/news/uk-16643677>.

¹²⁴ Catherine Barnard and Amy Ludlow, "Honeypot Britain: do EU nationals come to the UK for benefits?," *Open Democracy*, 23 March 2016, <https://www.opendemocracy.net/brexitdivisions/catherine-barnard-amy-ludlow/honeypot-britain-do-eu-nationals-come-to-uk-for-benefit>.

¹²⁵ Jonathan Portes, "Analysing the UK's deal: immigration, free movement, and benefits," *National Institute of Economic and Social Research*, 21 February 2016, <https://www.niesr.ac.uk/blog/analysing-uk%E2%80%99s-deal-immigration-free-movement-and-benefits#.VuWjSRcvug>.

while playing on public fears of migrants abusing the benefits system¹²⁶. This seems like a clear example of the government giving the appearance of doing something, while in fact enacting minor policies: They know such policies will either not achieve anything, or have not even carried out proper investigation to determine whether they are necessary. This clearly aligns with Slaven and Boswell's conception of 'symbolic policy making' as "cosmetic policy adjustments to signal values and intent, rather than substantive measures to steer the object of intervention."¹²⁷ If the public has constructed a threat in the form of migrants, especially undocumented migrants, abusing the benefits system, then any policy even vaguely addressing this will appeal to voters, even if it achieves little in a practical sense.

The hostile environment has indubitably made life more difficult for undocumented migrants, both in theory and in practice. But many of its provisions are mere extensions of policies already in place. Is the hypothetical migrant who comes here with the express intention of claiming NHS treatment going to be put off by the knowledge that they will have to prove entitlement before treatment, if the prospect of insurmountable debt was not a factor beforehand?¹²⁸ For a small business owner, if a

¹²⁶ In the process of researching this thesis I happened across a petition with over 36,000 signatures, submitted to Parliament, titled "Stop all benefits to illegal immigrants completely." (<https://petition.parliament.uk/archived/petitions/105658>). To the government's credit, they had responded to the petition truthfully saying that 'illegal immigrants' are ineligible for claiming benefits. However, they also used the response to taut their record on combating migration and tightening benefit restrictions.

¹²⁷ Boswell and Slaven, "Why symbolise control?," 1.

¹²⁸ Some may argue that there is a huge difference here: Someone may well be willing to try their luck claiming healthcare if they know that they will not get caught until afterwards, whereas a pre-check restricts access absolutely, so people will not even try. This relies on migrant awareness, which I will explore later. My question is mostly rhetorical, as the notion of undocumented migrants coming to the UK en masse to claim healthcare is largely a myth. A 2017 pilot scheme requiring patients to show two forms of identification to prove entitlement to free healthcare revealed that just 0.56% were not entitled. This

potential £10,000 fine per worker is not enough to dissuade them from deliberately turning a blind eye to a hiree's immigration status, will a £20,000 fine change their mind?

Of course, the government may be relying on marginal gains. Sure, some employers are unscrupulous and will break the law to hire undocumented migrants whatever, and many migrants will have forged documents to allow them to bypass right-to-work checks. But perhaps there are at least some employers for whom the extra potential fine will affect their decision. But I maintain that this is an extension of existing policy, and not a brand new direction as the name “the hostile environment” would suggest. Returning to my theoretical framework, it seems that the government is seeking to create a reputation for cracking down on undocumented migrants, by taking existing legislation, remoulding it in superficial ways or extending it to its logical conclusion, and rebranding the whole endeavour “the hostile environment,” to imply some radical paradigmatic shift. In many regards, hostile environment measures are all things that one could imagine the previous Labour administration implementing (and indeed, in many cases, they did just that). What has changed is the way that the Conservative government has presented them under a unified, anti-immigrant banner, affecting the party ‘brand’ and influencing public perception of those policies. To this end, it does not matter if the evidence shows, for example, that undocumented migrants represent a fraction of those seeking NHS treatment- It matters that the government can

would include all foreign nationals without entitlement, so the number of undocumented migrants will be even lower- See [David Oliver, “Health tourism, immigration, and the NHS,” *British Medical Journal* 2018, 361 (12 June 2018), <https://www.bmj.com/content/361/bmj.k2536>.]

be seen to be constantly creating new, innovative ways to deal with the ‘problem’, regardless of how big that problem is to begin with.

8. The Problem With Measurability

8.1. The Hostile Environment’s Effects Can’t be Measured

An obvious claim that can be levelled against the hostile environment as a genuine instrument for affecting change in immigration levels, is that it does not fit into the civil service’s own model for a successful policy. As we have seen already, good policy requires a clear goal, a clear strategy of how to achieve that goal, and a feedback mechanism, to see results and adapt the policy as needs be.

If we are to give the British government the benefit of the doubt, and take the hostile environment at face value, then the first aspect of this process- the clear goal- is self-evident: The election pledge to “take net migration back to the...tens of thousands a year, not hundreds of thousands,”¹²⁹ and additionally to reduce irregular migration.

I will address later the extent to which the hostile environment employs clear strategies that have a realistic chance of success, but immediately an issue arises with

¹²⁹ *The Conservative Party*, “The Conservative Manifesto 2010,” 21.

the final part of the policy wheel: How can one assess and evaluate a policy aimed at reducing irregular migration, which, by definition, cannot be measured?

When it comes to calculating the numbers of undocumented migrants in a state, “the exact figure is obviously impossible to determine.”¹³⁰ Estimates of the undocumented population in the UK are extremely varied: A study in 2005, using 2001 census data, estimated there may be 430,000 irregular migrants resident in the UK, but with upper and lower bounds of 570,000 and 310,000 respectively.¹³¹ An updated report taking into account potential population changes in the six years afterwards returned a central estimate of 618,000, with upper and lower bounds of 863,000 and 417,000.¹³² This is to say that, within the same study, depending on the extent to which certain assumptions hold, the predicted number present may vary by as much as 446,000: And *nobody knows for sure*. One former Liberal Democrat staffer told me, “We’re not even capable of accurately measuring the number of people who enter and leave the UK officially through ports; how can we hope to accurately determine the number who might come in and out under the radar?”¹³³

¹³⁰ *The Week*, “The truth about America's illegal immigrants,” 24 September 2016, <http://theweek.com/articles/650402/truth-about-americas-illegal-immigrants>.

¹³¹ Jo Woodbridge, “Sizing the unauthorised (illegal) migrant population in the United Kingdom in 2001,” *Home Office Online Report 29/05*, 2005, <http://webarchive.nationalarchives.gov.uk/20110218140629/http://rds.homeoffice.gov.uk/rds/pdfs05/rdsolr2905.pdf>, 5.

¹³² Ian Gordon et al, “Economic impact on the London and UK economy of an earned regularisation of irregular migrants to the UK,” *GLA Economics*, May 2009, https://www.london.gov.uk/sites/default/files/gla_migrate_files_destination/irregular-migrants-report.pdf, 52.

¹³³ Interview with former Liberal Democrat advisor, 14 June 2018.

From a policy perspective, this is worrying. How can one define the success of a policy, much less assess, reassess, and change the course of said policy, if the starting numbers and ending numbers are indeterminate? At what point could Theresa May confirm that the policy had achieved its goals? At what point does it stop? Even if the Home Office somehow found a way to accurately measure the irregular population in the UK today, and found it to be exactly 500,000, how would we know whether the policy had worked? Depending on the starting population (which was indeterminate), this might mean that the hostile environment had successfully reduced the undocumented population by as much as 363,000...but it might also mean that it raised the population by 83,000, or had no effect at all!

Earlier in this thesis, I said that I would largely avoid judging the role and intention of the hostile environment through a consequentialist lens- I would avoid making analyses based on outcomes. One may think then that it is hypocritical to suppose that a limitation of the hostile environment as a legitimate policy tool is its indeterminate outcomes. But in this case, the actual outcome itself is irrelevant: What matters is the principle that the outcome, *whatever the outcome*, cannot be measured. I would not say that a reduction in arrival numbers from, say, 50,000 a year to 20,000 a year is any more indicative of a genuine policy commitment (as opposed to a case of pandering to a hostile domestic public) than if arrival numbers instead rose to 80,000: But the fact that the Home Office is physically incapable of telling either way indicates a policy that cannot realistically be assessed, evaluated, and critically examined: That is to say, at the most generous reading, it is a hopeful wish more than a firm commitment to the goal of immigration deterrence. By way of analogy, suppose the government planned

to raise childhood literacy by 5%, and opted to utilise some vague and fantastical scheme (perhaps giving every child a free dictionary), but did not bother to measure literacy rates before, during, or after. At the next election, if they then touted their strong commitment to childhood literacy, we would have good reason to be sceptical of this claim, and moreover sceptical of the extent to which the government truly believed that their policy had had a realistic chance of success, rather than being performative in nature. It is hard to see how any of the measures contained in the hostile environment could have been created in good faith using the policy wheel, since a crucial component- the review stage- cannot possibly be performed.

8.2. Resisting Review

Some may accuse me of being unduly harsh in this criticism. As I have already noted, the exact undocumented population can never truly be determined. If we say the only good policy is a measurable one, does that mean that a government must simply never tackle issues such as undocumented migration, since it can never accurately determine success?

The first thing to note is that at times the government has not only resigned itself to a lack of measurability, but actively resisted measurability. The Home Office has not published an official estimate of the number of undocumented migrants in the UK since

the 2005 report previously mentioned.¹³⁴ This study was not perfect (using the ‘residual’ method of calculation, taking the total number of foreign-born respondents in the 2001 census and subtracting those known to have legal status), but it at least represented a starting point; an attempt to gauge the scale of the issue, which should form the backbone of effective policy making. The Conservative government, in contrast, has never commissioned a similar report, but has not hesitated to use bad data to legitimise their policies. When cracking down on “bogus colleges”, May justified her stance by citing figures from the Office of National Statistics (ONS), which estimated that 100,000 international students overstayed at the end of their visas.¹³⁵ However, in 2017 the estimate was revised, based on new exit check data, and demonstrated that in fact only 5,000 overstayed:¹³⁶ The initial rhetoric had been based on a **2000%** overestimation of the problem. We might be tempted to attribute this to poor quality of available data at the time, rather than any ulterior motive, but this seems more like wilful ignorance than an honest mistake: Portes remarked that the limitations of the data used by the ONS were well-known: “[May] knew at the time that this was a stupid policy based on bad data.”¹³⁷ Former Liberal Democrat minister David Laws later recalled being told by a senior civil servant, “Theresa May is saying that entry and exit checks would be expensive and embarrassing,”¹³⁸ showing that the government resisted review precisely because evaluation of the policies would not vindicate their success. It seems here then

¹³⁴ Alasdair Palmer and David Woods, “The politics of fantasy- Immigration policy in the UK after Brexit,” *Civitas*, June 2017, <http://www.civitas.org.uk/content/files/thepoliticsoffantasy.pdf>, 27.

¹³⁵ Heather Stewart, “Exit checks data raises questions over May’s focus on student overstayers,” *The Guardian*, 24 August 2017, <https://www.theguardian.com/uk-news/2017/aug/24/exit-checks-data-raises-questions-over-mays-focus-on-student-overstayers>.

¹³⁶ *Ibid.*

¹³⁷ *Ibid.*

¹³⁸ *Ibid.*

that rather than a well-meaning policy that faced certain statistical limitations, May chose to actively eschew measures which could have led to a more accurate picture of the immigrant population, and thus, better policies.

Of course, governments are often forced to adopt policies of which the outcomes cannot accurately be measured. But given the well documented commitment of the British government to EBPM, we would still expect, in the absence of measurable outcomes, some form of research or analysis that would indicate these policies likely to work. Indeed, in 2010, then-immigration minister Damian Green proclaimed, “[W]hatever your stance on immigration, if you are not basing policy on decent evidence you will be likely to fail.”¹³⁹ In reality, however, it seems clear that at many points in the process of designing the hostile environment, political expediency has taken precedence over substantive and rigorous EBPM. For example, in August 2012, the government suspended London Metropolitan University’s license to sponsor visa applications, a move intended to show that they were cracking down on ‘abuse’ of the system- but this was a hasty decision, taken just a few weeks before the start of term, leaving 2,000 students visa-less in limbo, and the decision was eventually overturned in court anyway.¹⁴⁰ The timing of the decision (close to the start of term when student migration would be a salient issue, but not early enough to actually dissuade applicants) combined with a failure to consider strategy or consequences, suggests political opportunism rather than a genuine, well-planned policy. Likewise, the ‘deport first, appeal later’

¹³⁹ Damian Green, “Damian Green's speech to the Royal Commonwealth Society,” *UK Government*, 6 September 2010, <https://www.gov.uk/government/speeches/immigration-damian-greens-speech-to-the-royal-commonwealth-society>.

¹⁴⁰ Partos, “No immigrants, no evidence?,” 13.

policy implemented with the 2014 Immigration Act was pushed through, despite the fact it might actually represent an increase in costs, as the government would have to fund return travel to those whose appeals were successful.¹⁴¹

The British legislature itself accepts that this is a disturbing aspect of the hostile environment. In November 2017, the Independent Chief Inspector of Borders and Immigration, David Bolt, testified in front of the Home Affairs Select Committee- the premium Parliamentary body tasked with scrutinising and assessing various government policy regarding home affairs, including immigration. In his oral evidence, he stated that “a problem with the...hostile environment...is that the Home Office does not have in place measurements in order to evaluate the effectiveness of those provisions.”¹⁴² He further expressed that what he would have expected to have seen by now is some evidence that the hostile environment is working, “so that there is some justification for the two pieces of legislation [the Immigration Acts 2014 and 2016] and for all of this effort that is being put into this by a whole variety of people.”¹⁴³ Bolt’s concerns were later adopted by the Committee in its final report, where additional concerns were expressed that, not only were there no criteria for measuring the effectiveness of the hostile environment, but that two obvious candidates for

¹⁴¹ Bale and Partos, “Immigration and asylum policy under Cameron’s Conservatives,” 173.

¹⁴² Home Affairs Committee, “Oral evidence: Home Office delivery of Brexit: Immigration,” HC 421, *House of Commons*, 29 November 2017, <http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/home-affairs-committee/home-office-delivery-of-brexit-immigration/oral/74819.html>, Q295.

¹⁴³ Ibid. Q 300.

measurement- numbers of enforced and voluntary returns- had in fact decreased in the time period.¹⁴⁴

The lack of oversight and evaluative reports alone does not definitively prove specifically that the government cares more about appealing to domestic audiences, but it does cast aspersions on the idea that these policies were implemented with a genuine belief that they could realistically succeed. Given the well-documented antipathy in the British public towards immigrants, especially undocumented immigrants, it seems at least plausible that a government may care more about implementing a policy, any policy, that *appears* to be tackling the issue, regardless of whether that goal can be tangibly assessed.

8.3. Issue Conflation To Create a Sense of Action

A further degree to which the motives of the hostile environment may attract suspicion, relative to issues of measurability, lie in the conflation of the hostile environment with the government's wider immigration targets, which *can* be measured (to an extent). A Home Office report from 2012 said that tackling irregular migration was "central" to the target of reducing net migration numbers.¹⁴⁵ If this is in reference to

¹⁴⁴ Home Affairs Committee, "Home Office Delivery of Brexit: Immigration," Third Report of Session 2017-19, *House of Commons*, 7 February 2018, <https://publications.parliament.uk/pa/cm201719/cmselect/cmhaff/421/421.pdf>, para 119.

¹⁴⁵ Hannah Toms and Katherine Thorpe, "Practical Measures for Reducing Irregular Migration," *UK Home Office*, 2012, <https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we->

the government's 2010 electoral pledge (calling for net migration to be reduced from hundreds of thousands to tens of thousands), then this is patently false. Irregular migrants simply do not factor in to the net migration figures, and so they cannot possibly affect them.

The use of issue linkage to achieve political objectives and obfuscate outcomes is a well observed phenomena in the area of migration management. Breuls notes how in Belgium, emphasis was placed on policies to target the removal of those specific undocumented migrants who had criminal records, thereby creating a rhetorical link in the public consciousness between undocumented migration and crime: Not only was this used to justify further clamp downs on immigration, but it also allowed the government to claim *migration* policies were succeeding when *crime* statistics improved.¹⁴⁶

Acknowledging the theoretical framework I am analysing these cases against, this makes sense. I posited that the government is concerned primarily with pumping out legislation to give the impression that they are being tough on immigration, regardless of whether immigration is actually being tackled. Conflating the hostile environment (the success of which is totally unmeasurable) with the more formal net migration target allows the government to create a false sense of *something being done*: If net migration

do/networks/european_migration_network/reports/docs/emn-studies/irregular-migration/uk_20120402_practicalmeasuresforreducingirregularmigration_final_en.pdf, 6.

¹⁴⁶ Lars Breuls, "Portraying forced removal as a means for crime control. On immigration policy communication in Belgium," *Lo Squaderno: Explorations in Space and Society*, No. 44 (June 2017): 39-42, 40.

does come down, the Conservatives can argue that their policy is working, even though the scope of these policy areas are completely different.¹⁴⁷

9. Demographics and Motivations

9.1. The Make-up of Undocumented Inflows

A look at why undocumented migrants come to the UK suggests that the hostile environment, even were it widely known, would not act as a deterrent pre-entry, and for a substantial number would not induce them to leave. If the government were truly committed to tackling undocumented migration, they would pursue alternate policies that take this into account.

I noted earlier that Finch and Cherti, drawing on Papademetriou, identify five categories of undocumented migrant: Undocumented entrants; Fraudulent entrants; Visa violators; Visa overstayers; and Refused asylum seekers. Analysing these groups will reveal the extent to which the hostile environment has a realistic chance of success. If it can be shown that these policies will be impotent, then it casts serious doubts as to the extent that they were well-planned and with a serious expectation of success.

¹⁴⁷ This tactic backfired as it became increasingly obvious that the net migration target could not be met.

I choose to group the first two categories, undocumented entrants and fraudulent entrants, together. While acknowledging that there are qualitative differences between and within these classifications, in both cases an entrant to the country has used deceptive means to bypass a border guard. Additionally, in both cases, unlike the other three cases, there is less scope to argue that they ‘do not know what they are doing’- these two categories of undocumented migrant represent perhaps the most flagrant abuse of border measures.¹⁴⁸

If we analyse the hostile environment as a deterrent measure, then we might expect this group to be the prime audience. As a demographic who have made an active choice to enter the country clandestinely or deceptively, we would imagine that they have done their research, and made an informed choice to come to the UK. Therefore, policies that make the UK unappealing, comparative to other countries in Europe or their country of origin, would affect this decision-making process.

However, this group is estimated to make up no more than 20% of the UK’s undocumented stock: As Finch and Cherti point out, “The irregular immigrant who has suffered great hardship and put him or herself in great danger to enter the UK ‘clandestinely’ is not the norm.”¹⁴⁹ With this in mind, we might expect that even if the

¹⁴⁸ I do acknowledge that there are people who fit these descriptions who are not entering the country deliberately or voluntarily- most notably victims of human trafficking. However, for the sake of analytic ease, I am choosing not to count these, because 1) They make up a very small relative number of migrant flows (See: Press Association, “Number of British trafficking victims more than doubles,” *The Guardian*, 16 December 2015, <https://www.theguardian.com/law/2015/dec/16/british-victims-human-trafficking-increase-2014-nca-report>.), and 2) Trafficking victims are in theory entitled to government support and limited leave to remain, so prima facie we would expect them not to be the target of the hostile environment.

¹⁴⁹ Cherti and Finch, “No Easy Options,” 9.

hostile environment is immensely successful at reducing immigration by this group, the impact it will have on total inflows will be modest.¹⁵⁰

Visa overstayers and violators represent by far the largest category, with Cherti and Finch estimating the number at about 60% of the undocumented population.¹⁵¹ When Theresa May said, “What we don’t want is a situation where people think that they can come here and overstay because they’re able to access everything they need,”¹⁵² it is clear that to a large extent the hostile environment was aimed at stopping these people from overstaying in the first place (i.e. encouraging them to leave before they joined the undocumented population), but undeniably the main way this policy was intended to affect this group was by inducing to leave those who have already overstayed.

The final category, refused asylum seekers, is not an insignificant demographic. Although the numbers fluctuate annually, in any given year, roughly between 25-40% of those who make an asylum claim will have their claim refused, and will not be known to

¹⁵⁰ It is worth pointing out that Cherti and Finch conducted their survey in 2011, when the refugee crisis was just beginning, and long before it peaked a few years later. However, if we look at asylum application data (perhaps the closest approximation for the extent of the impact of the refugee crisis on arrival numbers to Britain), we see that before 2011, annual arrivals were usually somewhere in the range of 25-30,000, and after 2011 they fluctuated from 30-40,000 (<https://www.migrationpolicy.org/programs/data-hub/charts/asylum-applications-euefta-country-2008-2017>). As previously mentioned, a decade ago Gordon et al estimated the undocumented population at somewhere between 863,000 and 417,000, and we can only presume the population has increased since then. Therefore an annual increase of asylum seekers, many of whom will be accepted as refugees (as legally defined), of no more than 15,000 is unlikely to affect the long term demographic trends of the undocumented population.

¹⁵¹ Cherti and Finch, “No Easy Options,” 9.

¹⁵² Travis, “Immigration bill: Theresa May defends plans to create 'hostile environment'.”

have left the country (either voluntarily or through deportation).¹⁵³ With 258,145 total asylum applications in the UK between 2010 and 2017,¹⁵⁴ this indicates an estimate of 103,258 refused asylum seekers who have come to the UK just since the Coalition government came to power and are now living with undocumented status, not to mention those who have been present for far longer.

The discourse around migration in Europe has for over two decades distinguished between ‘genuine’ refugees and ‘bogus’ asylum seekers, the former being in real need of international protection, the latter merely economic migrants looking to opportunistically enter Western states among refugee waves, but fleeing no conflict, violence, or persecution.¹⁵⁵ It is clear that the Conservatives share this distinction, and the hostile environment is to some degree aimed at keeping out those deemed to be making supposedly spurious applications- Theresa May told the Conservative Party conference in 2015, “the fewer people there are who wrongly claim asylum in Britain, the more generous we can be in helping the most vulnerable people in the world’s most dangerous places.”¹⁵⁶ The hostile environment serves therefore to deter from entry those viewed as making false asylum claims, as they will face a harsher life when their case is

¹⁵³ Scott Blinder, “Briefing- Migration to the UK: Asylum,” *The Migration Observatory at the University of Oxford*, 26 October 2017, <https://migrationobservatory.ox.ac.uk/wp-content/uploads/2016/04/Briefing-Asylum17.pdf>, 7.

¹⁵⁴ Eurostat, “Asylum and first time asylum applicants by citizenship, age and sex: Annual aggregated data (rounded),” Updated 30 March 2018, <http://appsso.eurostat.ec.europa.eu/nui/show.do?>

¹⁵⁵ Magdalena Kmak, “Between citizen and bogus asylum seeker: management of migration in the EU through the technology of morality,” *Journal for the Study of Race, Nation and Culture* 21, No. 4, (2015): 395-409, 403.

¹⁵⁶ *The Independent*, “Theresa May’s speech to the Conservative Party Conference- In full,” 6 October 2015, <https://www.independent.co.uk/news/uk/politics/theresa-may-s-speech-to-the-conservative-party-conference-in-full-a6681901.html>.

ultimately rejected. Furthermore, for those already in the UK, the hostile environment is an incentive to leave and return to their country of origin.

It is worthy of note that the rejection of an asylum claim does not necessarily make that claim “bogus”: It may be indicative of a lack of substantive evidence, a stubborn Home Office official, or the psychological effect of trauma leading to narrative inconsistencies at the application stage.¹⁵⁷ Additionally, there was outcry when it emerged that a third of asylum applications had been made by people already living with undocumented status in the country after being picked up by enforcement officials. Many thought that this indicated that a large number of applicants were opportunistic and fraudulent.¹⁵⁸ But many migrants may simply not know the intricacies of the asylum process, or dangerous conditions in their home country might have manifested *after* they entered the UK. Two brothers I interviewed had been living with undocumented status for nearly a decade. They came to the UK on visitor visas, before political issues back home prevented their return. They therefore overstayed their visa, but due to circumstances outside of their control, their solicitor simply did not submit their asylum application.¹⁵⁹ Their claim is *now* being processed, but before the mistake was realised they would have been counted as ‘bogus’ asylum seekers, or simply visa overstayers. This story is also indicative of the fact that not everyone who overstays their visa enters

¹⁵⁷ Stephen Paskey, “Telling Refugee Stories: Trauma, Credibility and the Adversarial Adjudication of Claims for Asylum,” *Santa Clara Law Review* 56, No. 3 (2016): 457-530, 484.

¹⁵⁸ Sebastian Mann, “Revealed: False claims by thousands of illegal immigrants clog asylum system,” *The Evening Standard*, 15 August 2016, <https://www.standard.co.uk/news/uk/revealed-false-claims-by-thousands-of-illegal-immigrants-clog-asylum-system-a3320131.html>.

¹⁵⁹ Interview with Pakistani asylum seekers, 11 June 2018.

the country expecting to do so, casting doubts on the hostile environment as a deterrent mechanism for this group.

Indeed, closer examination of the motivations of undocumented migrants undermines the accepted wisdom that there is a qualitative difference between genuine refugees and other inflows of undocumented migrant. It also seriously undermines the view that the hostile environment will lead to great success.

9.2. Why do Undocumented Migrants Come to the UK?

The decision to come to any given country is the result of a combination of push and pull factors: Push factors being those issues that induce one to leave one's country of origin, and pull factors being things in a destination country that draw migrants to try and settle there.

Finch and Cherti, for example, found that fleeing persecution and conflict was the fourth most common reason given by undocumented respondents as to why they chose to leave their home country, with 17% citing it as a major reason (and not all of those claimed asylum at the border).¹⁶⁰ During my own interviews I spoke to one man from Sudan, who had first claimed asylum in Ireland and been refused: He came to the UK, not to claim asylum again (he told me that he knew this would be impossible), but rather because he was simply out of options. There is a significant population of

¹⁶⁰ Cherti and Finch, "No Easy Options," 34.

undocumented migrants in the UK who will not be induced to return by the hostile environment, nor will be put off coming in the first place, because it is preferable to the harm that they will face in their country of origin. Migrants may also flee hardships, including extreme poverty, that might not meet the criteria for formal legal asylum, but represent an instance of forced migration nonetheless.¹⁶¹

Finch and Cherti also emphasise that economic factors comprise a key reason for undocumented migration, with 40% of respondents saying that they came to the UK primarily to earn more money, 12% saying low earnings in their home country was the main reason, 11% blaming unemployment, and 8% citing poor career prospects. The hostile environment has potential to affect this group, although a case can be made that there will always be a motivation for individuals to continue to immigrate just so long as economic opportunities, even for undocumented workers, are greater in the UK than in origin countries.¹⁶²

We also need to consider not just why migrants may want to leave their country of origin, but why they choose the UK specifically. Again, prevailing evidence in the literature does not indicate that the hostile environment is likely to be efficacious.

¹⁶¹ Ragnhild Aslaug Sollund, "Introduction: Manoeuvring Rights: Immigrants' Experience of Inclusion and Exclusion," in *Transnational Migration, Gender and Rights*, eds. Liam Leonard, and Ragnhild Sollund, (Bingley: Emerald Publishing Limited, 2012), 2.

¹⁶² Larry Sjaastad, "The Costs and Returns of Human Migration," *Journal of Political Economy* 70, No. 5, (Oct., 1962): 80-93, 82.

The first thing to note is that for those who would come under the categories of clandestine entrants or refused asylum seekers, the notion of a “pull factor” is somewhat redundant anyway. McAuliffe and Jayasuriya posit that migrants exist on a “continuum of agency”, trying to maintain as much control of their lives as possible, but in reality being beholden to external factors.¹⁶³ Often migrants find themselves subject to the will of smugglers, or will be forced to adapt their plans dynamically in response to developments en route.¹⁶⁴ For these migrants, the hostile environment is not going to factor in to their decision making, as the decision is not theirs to make.

That said, where migrants are able to exercise agency, empirical evidence suggests that some factors are more important than others in determining destination choice. Thielemann, using asylum flows as a proxy for “unwanted migration”, found little correlation between deterrent policies and application numbers, concluding that the strength of the economy, historic migration patterns between countries, shared language, and colonial ties were more important.¹⁶⁵ Using qualitative interviews, Crawley found that for those crossing the Mediterranean during the recent refugee

¹⁶³ Marie McAuliffe and Dinuk Jayasuriya, “Do Asylum Seekers and Refugees Choose Destination Countries? Evidence from Large-Scale Surveys in Australia, Afghanistan, Bangladesh, Pakistan and Sri Lanka,” *International Migration* 54, no. 4 (August 2016): 44–59, <https://doi.org/10.1111/imig.12240>, 45.

¹⁶⁴ Jessica Hagen-Zanker and Richard Mallett, “Journeys to Europe: The role of policy in Migration Decision-Making,” *Overseas Development Institute*, February 2016, <https://www.odi.org/sites/odi.org.uk/files/odi-assets/publications-opinion-files/10298.pdf>, 3; *University of Warwick*, “Crossing the Mediterranean Sea by Boat,” 74; Heaven Crawley, Franck Duvell, Katharine Jones and Dimitris Skleparis, “Understanding the dynamics of migration to Greece and the EU: Drivers, Decisions, and Destinations,” *Unravelling the Mediterranean Migration Crisis (MEDMIG)*, Research Brief No. 2, September 2016, 9; Mixed Migration Platform, “How Powerful is Policy? The role of policy in shaping migrant decision-making,” August 2017, 4.

¹⁶⁵ Eiko Thielemann, “Does Policy Matter? On Governments’ Attempts to Control Unwanted Migration,” Working Paper 112, *The Center for Comparative Immigration Studies*, December 2004, <http://personal.lse.ac.uk/thielema/Papers-PDF/CCIS-WP-112-2004.pdf>.

crisis, the presence of family members in a country was of far greater importance than a specific country's asylum or immigration policies.¹⁶⁶ The logic behind this is obvious: People will want to go where they have the best chance of fitting in and thriving- Understanding the language, the culture, and being around family and friends will be key to that process, as will entering a country where the economy is booming, with ample opportunities for self-advancement. This is to say that migrants will be attracted to the UK because it is a top industrial nation, and boasts large immigrant communities- these factors will not be changed by the hostile environment.

There are some important caveats to the above analysis however. It may be true that "richer destination countries receive a higher per capita share of asylum seekers",¹⁶⁷ and this is not something the government can or should want to change. But the hostile environment may affect migrants' perceptions of their ability to participate in, and therefore enjoy the benefits of, a strong economy. Nevertheless, within diaspora or social networks, it is relatively easy for migrants to bypass right-to-work checks, whether that be because of compatriots giving them cash-in-hand jobs as a favour, or through the forgery of documents or the borrowing of friends' legitimate documents.¹⁶⁸ Where social networks between origin and destination countries are strong, the costs of migration are lower, as diaspora communities will be able to provide information,

¹⁶⁶ Crawley, Duvell, Jones and Skleparis, "Understanding the dynamics of migration to Greece and the EU," 9.

¹⁶⁷ Eric Neumayer, "Asylum Destination Choice: What Makes Some West European Countries More Attractive Than Others?," *European Union Politics* 5, number 2 (June 1, 2004): 155–80, <https://doi.org/10.1177/1465116504042444>, 174.

¹⁶⁸ Alice Bloch, "The labour market experiences and strategies of young undocumented migrants," *Work, Employment & Society* 27, No. 2, (April 2013): 272-287, 279.

assistance, and emotional support, therefore there is more incentive to migrate.¹⁶⁹ In the next chapter I will analyse in more depth how messaging by both the government and social networks undermines the ability of the hostile environment to have an effect, but for now it will be enough to mention that where social networks remain a key component of migration flows, the ability of the hostile environment to deter entry will rely on overcoming these barriers.

An additional caveat is that a country's general 'friendliness' or 'liberalness' towards migrants and asylum seekers acts as a pull factor,¹⁷⁰ while there also exists a negative correlation between electoral performance of far-right parties and destination choice.¹⁷¹ Therefore policies that are specifically designed to make the UK a 'hostile environment' for undocumented migrants may entice those migrants to try their luck in more liberal northern European states. However, these caveats are dependent on the realities of the hostile environment being known to would-be migrants through messaging, an issue I will explore in more depth in the next chapter.

Furthermore, this form of analysis may not apply to those migrants coming to the UK with visas. However, if we follow the Conservatives' logic, and conceive of visa overstayers as people who have made a rational choice to come to the UK and deliberately overstay in order to live in the country irregularly, then the motivations may

¹⁶⁹ Sonja Haug, "Migration Networks and Migration Decision Making," *Journal of Ethnic and Migration Studies* 34, No. 4 (2008): 585-605, 588.

¹⁷⁰ Eiko Thielemann, "Does Policy Matter? On Governments' Attempts to Control Unwanted Migration," 23;

McAuliffe and Jayasuriya, "Do Asylum Seekers and Refugees Choose Destination Countries?," 50.

¹⁷¹ Eric Neumayer, "Asylum Destination Choice: What Makes Some West European Countries More Attractive Than Others?," 174.

be similar- deliberate visa overstaying being just another, more drawn-out, way of evading a border check. Of course, we have seen that not all visa overstayers come to the UK expecting to overstay.

The hostile environment relies on a specific logic, that aims to reduce undocumented migration through deterring entry and inducing exit. Such thinking borrows heavily from rational choice theory, suggesting that the decision to enter or remain in a territory is based off of a logical calculation of net benefit to the individual, relying on impartial assessment of objective conditions.¹⁷² The hostile environment assumes that the procedurally relevant criteria that a migrant will base their decision to enter or stay on are largely economic (access to housing, employment, etcetera). Aside from issues of incomplete information, competing priorities, and so forth, this ignores the myriad non-economic reasons why migrants choose to leave home and settle in foreign countries, especially emotional or affective reasons.¹⁷³ As Ryo says, “The view of would-be migrants as atomistic, utility maximizing opportunists diverts our attention away from the complex and wide-ranging moral systems within which prospective migrants are embedded.”¹⁷⁴ Du and Li found in China that emotional responses based on subjective assessments of social realities were more important in migrant decision-

¹⁷² Emily Ryo, “Deciding to Cross: Norms and Economics of Unauthorized Migration,” *American Sociological Review* 78, No. 4, (August 2013): 574-603, 576.

¹⁷³ Huimin Du and Si-ming Li, “Is It Really Just a Rational Choice? The Contribution of Emotional Attachment to Temporary Migrants’ Intention to Stay in the Host City in Guangzhou,” *China Review* 12, No. 1 (Spring 2012): 73-93, 76.

¹⁷⁴ Ryo, “Deciding to Cross: Norms and Economics of Unauthorized Migration,” 576.

making than cognitive evaluation of evidence.¹⁷⁵ In the context of the UK and the hostile environment, this is to say that a policy that relies on merely restricting access to a range of economic opportunities and services is unlikely to be successful when migrants have established lives in the UK and conceive of it as home. One Congolese migrant told me that he had always considered his stay in the UK as a short term way to get money, but had reconsidered and decided to stay after his girlfriend became pregnant.¹⁷⁶ A Ugandan woman told me that despite facing immense hardships since arriving, “If I compare the type of life I was living there and here I feel like I would rather be here. I am more happy here.”¹⁷⁷

Further, policy makers believe that those who reside in a country irregularly have made a rational choice to break the law, by weighing the benefits of disobedience against the risks. But such thinking fails to explain why, if this is a mindset adopted by undocumented migrants, such people are not more likely to break the law in other walks of life, where to do so might accrue benefits.¹⁷⁸ Ryo, taking Mexican migration to the US as a case study, found that individuals who self-declared as likely to attempt to cross the border irregularly, were more likely to agree that individuals had a right to break unjust laws, and were more likely to believe that the US had no right to restrict immigration from Mexico.¹⁷⁹ In the context of the UK this is prescient, with Finch and Cherti finding that many undocumented migrants they spoke to, some of whom had been working productively and contributing to society for a number of years, believed that they were

¹⁷⁵ Du and Li, “Is It Really Just a Rational Choice?”

¹⁷⁶ Interview with Congolese migrant, 11 June 2018.

¹⁷⁷ Interview with Ugandan migrant, 11 June 2018.

¹⁷⁸ Ryo, “Deciding to Cross: Norms and Economics of Unauthorized Migration,” 575.

¹⁷⁹ Ibid, 592.

morally justified resisting return in a system they believed to be unfair.¹⁸⁰ I found this attitude to be common among the migrants I spoke to, with one Congolese man telling me, “All people are the same...[a visa] is just a paper...if you’re paying tax, there [should be] no problem. We’re living underground but still we’re paying tax.” Therefore, in many ways, the excessive harshness of the hostile environment may do more harm than good, hardening attitudes of migrants and giving them more justification to resist the system.¹⁸¹

When we consider the ability of the hostile environment to induce emigration, it is also worth remembering that some undocumented migrants will have accrued large debts to smugglers in order to get to the UK¹⁸²– the hostile environment is unlikely to persuade them to leave before they have raised enough money to pay this off. Furthermore, many who travel for economic reasons do so as a result of pressure to send remittance back to their family, and it is almost seen as a rite of passage, especially where a ‘culture of migration’ has developed:¹⁸³ Finch and Cherti quote an IOM worker in China who summarised it by saying, “If you are not going, you are not ambitious – and if you return without money, you are a failure.”¹⁸⁴ In both these cases, economic and

¹⁸⁰ Cherti and Finch, “No Easy Options,” 6.

¹⁸¹ One undocumented migrant I spoke to from Sudan expressed dismay at the government closing routes to regularisation: He lamented why, having spent years in the UK, contributed to society, and broken no laws, he was being punished regardless. Furthermore, he acknowledged that there needed to be immigration control, but just deemed the current system too strict and unfair.

¹⁸² Alice Bloch, Nando Sigona, and Roger Zetter, “Migration routes and strategies of young undocumented migrants in England: a qualitative perspective,” *Ethnic & Racial Studies* 34, No. 8 (August 2011): 1286–1302, 1291.

¹⁸³ Bloch, “The labour market experiences and strategies of young undocumented migrants,” 274.

¹⁸⁴ Cherti and Finch, “No Easy Options,” 34.

social factors exogenous to the hostile environment will limit the effectiveness of its provisions.

As previously mentioned, the hostile environment is seemingly based on assumptions about the motivations and demographics of undocumented migrants, but those assumptions are misguided. In reality, fewer undocumented migrants than expected enter clandestinely, and while access to economic opportunities are a factor in motivating migration, there are myriad social and emotional components at play, including family ties, shared language, a sense of belonging, and historic connections. Indeed, Finch and Cherti found that 75% of respondents had absolutely no intention of returning to their country of origin any time soon despite the hardships resulting from the hostile environment, even though they acknowledged that it was getting harder to work and instances of deportation were perceived to be increasing- Less than 10% had plans to leave within one year.¹⁸⁵ 40% had intentions to stay permanently, and for those who wanted to eventually return, they expressed a desire to do so “when they had achieved targets for accumulating money or reaching personal goals.”¹⁸⁶ The hostile environment will not remove the push factors that cause people to leave origin countries in the first place, it does little to dissuade them from choosing the UK over alternatives, and its logic does not cohere with the mindset of undocumented migrants, making voluntary emigration unlikely.

¹⁸⁵ Cherti and Finch, “No Easy Options,” 12.

¹⁸⁶ Ibid.

The UK perhaps accepts this, recognising the need to provide developmental aid to other countries to mitigate against the structural causes of irregular migration.¹⁸⁷ And, perhaps acknowledging that once undocumented migrants are within the UK they are unlikely to actually leave voluntarily (despite this being one of the main purposes of the policy), the government has, with less public fanfare, ramped up border controls, including outsourcing so-called ‘juxtaposed’ border checks to France and Belgium, using technology to identify clandestine entrants stowed in vehicles, and implementing carrier sanctions, to name but a few.¹⁸⁸ Meanwhile, voluntary returns, and enforced removals, which might represent perhaps two of the biggest indicators available for the success of the hostile environment policies specifically, have fallen in recent years.¹⁸⁹ The continued implementation of the hostile environment despite evidence that its provisions will lack efficacy, while alternative measures (such as border checks and aid donations) are pursued in a less public manner, serve to reinforce Boswell and Slaven’s theory of symbolic policy making as an adaptive mechanism; here we see a clear indication of a government identifying and implementing measures which might actually work, but nonetheless relentlessly pursuing less efficacious policies that cohere more with the public’s conception of what will be effective. This seems to suggest that the hostile environment itself is a performative mechanism, designed to appeal to

¹⁸⁷ *Independent Commission for Aid Impact*, “The UK’s aid response to irregular migration in the central Mediterranean,” 10 March 2017, <https://ica.i.independent.gov.uk/html-report/uks-aid-response-irregular-migration-central-mediterranean>.

¹⁸⁸ Toms and Thorpe, “Practical Measures for Reducing Irregular Migration.”

¹⁸⁹ Home Affairs Committee, “Immigration policy: basis for building consensus,” Second Report of Session 2017-19, *House of Commons*, 10 January 2018, <https://publications.parliament.uk/pa/cm201719/cmselect/cmhaff/500/500.pdf>, 18.

voters' sentiments, even though the evidence shows that such measures will not affect migrants themselves.

10. The Failure Of Messaging

10.1. External Messaging

As previously mentioned, a main role of the hostile environment is as a deterrence policy. As Hagen-Zanker and Mallett elucidate-

“Governments want these policies to ‘send a message’. They focus on amplifying that message as loudly as possible, so that people thousands of miles away – people who might not have even started their migration journeys – are able to hear it. This approach operates on the assumption that by transmitting negative signals and messages, governments can change someone’s mind about migrating, at least to a particular place.”¹⁹⁰

¹⁹⁰ Hagen-Zanker and Mallett, “Journeys to Europe: The role of policy in Migration Decision-Making,” 2.

But what if the evidence were to show that governments do not in fact amplify that message “as loudly as possible”? What are we to make of these so-called ‘deterrence policies’ then?

Using messaging to spread deterrence policies to other countries is nothing new. In 1972, as many Ugandan Asians attempted to flee persecution from the regime of Idi Amin, Leicester City Council took out an advert in the Ugandan Argus newspaper.¹⁹¹ The advert told Ugandans that housing waiting lists were long, public services stretched, and school places scarce¹⁹²- in short, coming to settle in Leicester was a bad idea. As it transpired, the advert was unsuccessful, with former Leicester councillor Lord Bach telling BBC’s *Today Programme* in 2013, “It was actually almost an advertisement for people to come.”¹⁹³

More recently, as millions of migrants have crossed the Mediterranean into Europe since 2011, governments have been reaching out into origin countries to dissuade them from coming. In 2015, the German embassy in Afghanistan ran campaigns on social and traditional media to warn of the risks of travelling to Europe;¹⁹⁴

¹⁹¹ Ceri Oeppen, “Leaving Afghanistan! Are you Sure? European Efforts to Deter Potential Migrants Through Information Campaigns,” *Human Geography* 9, No. 2 (2016): 57-68, 57.

¹⁹² *BBC News*, “Ugandan Asians advert ‘foolish’, says Leicester councillor,” 8 August 2012, <https://www.bbc.com/news/uk-england-leicestershire-19165216>.

¹⁹³ Oeppen, “Leaving Afghanistan! Are you Sure?,” 57.

¹⁹⁴ Mixed Migration Platform, “How Powerful is Policy? The role of policy in shaping migrant decision-making,” August 2017, 1.

Denmark also broadcast its refugee policies in Lebanese newspapers that year;¹⁹⁵

Belgium has in the last decade run awareness campaigns in 16 different countries.¹⁹⁶

Such awareness campaigns are a crucial element in a deterrence policy. As I argued previously, a deterrence policy without a credible effort to ensure affected parties are aware of the negative repercussions of non-compliance is deterrent in name only. If a state wants to argue that they are within their rights to withhold duties and obligations from undocumented migrants, on account of the fact that those migrants have knowingly violated explicit rules, then migrants must be aware that the rule existed beforehand. Suppose I decide to migrate to the UK with the sole intention of getting a job: A policy that restricts my access to the labour market might act as a deterrent, but only if I am aware of it.

The UK's has not pursued effective information campaigns to the same extent as other countries. In November 2016, the European Migration Network published the results of an ad hoc enquiry into the use of information campaigns by EU governments.¹⁹⁷ The question asked was, "Have your national authorities ever implemented any information and awareness raising campaign targeting prospective migrants and asylum seekers in their countries of origin or in country of transit towards the EU?"¹⁹⁸ While Belgium has run 23 campaigns in 16 countries, and the Netherlands

¹⁹⁵ Ibid, 2.

¹⁹⁶ European Migration Network, "Summary of EMN Ad-Hoc Query No. 2016.1100: Migration information and awareness raising campaigns in countries of origin and transit," *European Commission*, November 2016, 1.

¹⁹⁷ European Migration Network, "Summary of EMN Ad-Hoc Query No. 2016.1100: Migration information and awareness raising campaigns in countries of origin and transit."

¹⁹⁸ Ibid, 1.

has run five campaigns targeting 28 different countries, the UK in its response only listed one campaign, targeting Sudan, Ethiopia, and Eritrea. The British response to the report explicitly refuses to elaborate on the contents of this campaign, and as we will see there have been *some* other efforts made to reach migrants outside of the UK, however this initial response does not indicate a government taking all reasonable steps to warn potential migrants of the hardships that face them if they choose to violate the UK's borders.

The government has made some alternative efforts to reach migrants in countries of origin, including collaborating with the Foreign Office and targeting local media. For example, the UK worked closely with the Vietnamese authorities on an information campaign to highlight the risks of irregular migration, including the production of a TV documentary.¹⁹⁹ In South Asia, the UK Border Agency and Foreign Office commissioned a film, interviewing returned migrants, to show the downside of irregular migration to the UK, which was shown in different locations.²⁰⁰ The Foreign Office also helped the Kenyan state broadcaster insert an immigration-related storyline into a popular East African soap, 'Makutano Junction', which has 20 million viewers.²⁰¹ The government collaborated with the government of the Democratic Republic of Congo on the production of a television programme called 'Tose Mibeko' (meaning 'Play by the

¹⁹⁹ Toms and Thorpe, "Practical Measures for Reducing Irregular Migration," 29.

²⁰⁰ Ibid.

²⁰¹ UK Border Agency, "Protecting Our Border, Protecting The Public: The UK Border Agency's five year strategy for enforcing our immigration rules and addressing immigration and cross border crime," *UK Home Office*, February 2016, 16

Rules’), broadcast on six channels on Congolese TV as well as in cinemas, theatres, and schools.²⁰²

Information on the content of these campaigns is hard to find. Therefore it is hard to tell what aspects of British immigration policy they are highlighting or emphasising. It is also hard to tell the extent of their reach or impact. The Home Office itself admits that “it is difficult to directly evaluate the effectiveness of these measures.”²⁰³ If we return to the subject of measurability, we would expect the government to have undertaken some form of analysis as to whether such campaigns are reaching the audience in the best possible way. As it stands, we are left to conjecture the extent to which a potential migrant would truly be discouraged from entering the UK based on the plotline in a fictitious TV programme. One Congolese migrant told me that his only knowledge of the UK prior to entry was basic facts and history he had learnt at school; He said that only rich people were able to access more comprehensive and up-to-date information, undermining the view that targeted campaigns, even within specific countries, are truly taking all steps to reach audiences.²⁰⁴ Additionally, many of the campaigns examined above were launched before the provisions of the hostile environment took effect. It is unclear whether similar campaigns have been launched specifically to address hostile environment policies.²⁰⁵

²⁰² Cherti, “Does Immigration Enforcement Matter?.”

²⁰³ Toms and Thorpe, “Practical Measures for Reducing Irregular Migration,” 30.

²⁰⁴ Interview with Congolese migrant, 11 June 2018.

²⁰⁵ In the course of researching this thesis, I made a Freedom of Information Act request to determine whether comprehensive information campaigns had been launched since the hostile environment came into effect. At the time of publication, my request for information had not been returned.

One aspect of information campaigns that can be examined is a leaflet entitled “Your Stay in the UK”, which has been given to every visa applicant since 2011 and is intended to ensure visa compliance.²⁰⁶ This leaflet very briefly outlines the need to pay for NHS treatment, and the punishments for working illegally, but it is scant on enforcement information, and cannot in any reasonable sense be expected to form part of a comprehensive deterrence campaign.²⁰⁷

When we consider the hostile environment as immigration deterrence, and how information campaigns play into this, an important matter to remember is that, as previously discussed, many migrants coming to the UK adapt their plans dynamically en route, and may not have chosen the UK until events along the journey forced them into contingency plans. Therefore, while the UK may have taken some limited steps to run small campaigns in specific origin countries, the fact that the Home Office “do not run broad public facing campaigns to spread information about the UK’s immigration policy”²⁰⁸ is a worry. I can find no evidence that the Home Office publishes press releases, or policy announcements, in any language besides English, making it unlikely that a non-English speaking migrant in transit would be able to find up-to-date information from official sources.

Given that migrants are increasingly using social media and the internet to obtain information about destination countries in transit,²⁰⁹ I wanted to investigate whether

²⁰⁶ Toms and Thorpe, “Practical Measures for Reducing Irregular Migration,” 29.

²⁰⁷ *UK Border Agency*, “Your Stay in the UK,” 2011, http://www.visaforum.org/cms/upload/uk_stay_1.pdf.

²⁰⁸ *Home Office Communication Directorate*, Email correspondence received 20 July 2018.

²⁰⁹ Houssein Charmarkeh, “Social Media Usage, Tahriib (Migration), and Settlement Among Somali Refugees in France,” *Refuge* 29, No. 1, (2013): 43-52.

the government was using this medium to broadcast messages about the hostile environment. I examined the Facebook pages for the British consulates in India²¹⁰, Pakistan²¹¹, Bangladesh,²¹² and Nigeria²¹³ over a four month period from 1 May 2018 until 1 September 2018. While it is hard to determine the exact national make-up of the undocumented population in the UK, I chose these four as the countries with some of the highest numbers of nationals in immigration detention,²¹⁴ taking detained population to be an approximation of the total undocumented population.²¹⁵ Although Albania and China both have a higher detained population than Nigeria, the Albanian consulate Facebook page is in Albanian, while the Chinese page posts too infrequently to be of analytic use (perhaps reflecting the lack of Facebook use in China). I therefore chose the aforementioned countries as examples of places where the UK government would be most interested in targeting a deterrent message to effectively reduce migration, while also being possible for me to analyse. I chose to study the consulate Facebook pages as these give the best indicator of the message that the British government wants to broadcast to each country. I specifically chose not to focus on domestic government departments (for example, the Home Office), under the assumption that a migrant in transit who might not speak English would turn to the

²¹⁰ British High Commission New Delhi, "UK in India", *Facebook*, https://www.facebook.com/pg/bhcindia/posts/?ref=page_internal, [Accessed 6 September 2018].

²¹¹ British High Commission Islamabad, "UK in Pakistan", *Facebook*, <https://www.facebook.com/bhcpakistan/>, [Accessed 6 September 2018].

²¹² British High Commission Islamabad, "UK in Bangladesh", *Facebook*, <https://www.facebook.com/ukinbangladesh/>, [Accessed 6 September 2018].

²¹³ British High Commission Abuja, "UK in Nigeria", *Facebook*, <https://www.facebook.com/ukinnigeria/>, [Accessed 6 September 2018].

²¹⁴ Melanie Gower and Terry McGuinness, "Immigration Detention in the UK: An Overview," Briefing Paper Number 7294, *House of Commons Library*, 29 August 2018, 28.

²¹⁵ This admittedly relies on an assumption that those undocumented migrants caught and detained are a representative sample of undocumented migrants more generally. I accept that there are a good number of reasons why this might not be entirely the case, however it is outside the scope of this paper to address them here. For the purposes of my thesis, this approximation should be sufficient.

consulate page for their own country first.²¹⁶ I also chose this to determine whether the UK government was mirroring information campaigns undertaken by the German Embassy in Afghanistan, for instance.²¹⁷

My findings were revealing. In the entire four month period I examined, in which a total of 481 posts were made by these pages combined, not one pertained to the hostile environment. This is not to say that migration was not addressed: In India, for instance, out of 145 total posts, 27 promoted Britain to some degree or encouraged foreign nationals to visit, while 19 posts provided information on how to obtain a visa or scholarship to come to the UK. Many of these posts in fact spoke of how easy it was to get a visa, with a few pointing to the fact that nine out of ten applications were accepted last year. While we may argue that encouraging legal routes to migration is necessarily a counterweight to undocumented migration (directing some who may try to enter irregularly to apply for a visa instead), in order to work as a deterrence policy, potential migrants need to be aware of the risks of the hostile environment.

There are a couple of counterpoints here. First, the four month period under examination is two years after the last Immigration Act was passed, and three years after the peak of the ‘migrant crisis’. It is possible that during both of these periods, where the issue of tackling undocumented migration was more prescient, that more public information campaigns were executed.

²¹⁶ Even though I acknowledge that the examples I chose are all English-speaking, I wanted the results to be applicable to non-English speaking contexts. This again relies on an assumption that British consulates in different countries will post similar content to one another. Although I found there to be some difference in content between pages I studied, the general messaging was similar enough to support this conclusion.

²¹⁷ Oeppen, “Leaving Afghanistan! Are you Sure?”

Second, one might argue that the purpose of the embassy is to promote the country abroad, and therefore it is unlikely that it would overtly broadcast information about cruel government policies.

However, I argue that this entirely reinforces my point. An embassy's job is to promote the agenda of the country in question, as well as to influence how that country is perceived by the world. The Facebook page for the consulate in Nigeria, for instance, posted frequently about British initiatives to help advance disability rights. In Bangladesh, there was a focus on Britain's leading role in providing aid to Rohingya refugees. If the UK's embassies choose not to disclose the hostile environment, that is because that is an aspect of Britain that the government does not want those outside the country to be aware of. While I accept that in the past, more explicit information campaigns may have been run, I wanted to simulate the experience of a migrant choosing to come to the UK *today*: If the hostile environment were really intended to be as pervasive and constant as the government says, we would expect the messaging to its target audience to be just as consistent.

Ampolo et al posit that European governments are hesitant to provide information about immigration policies online to avoid being seen to encourage further immigration,²¹⁸ leaving an information vacuum.²¹⁹ But the alternative to providing this information is to abdicate responsibility for ensuring those outside the country are

²¹⁸ The example of Leicester's targeting of Ugandans shows that even a negative campaign can encourage immigration.

²¹⁹ Lawrence Ampofo, Margaret Cheesman, Becky Faith, Marie Gillespie, Evgenia Iliadou, Ali Issa, Souad Osseiran, Dimitris Skleparis, "Mapping Refugee Media Journeys: Smartphones and Social Media Networks," *The Open University / France Médias Monde*, 13 May 2016, 5.

aware of the hostile environment before they are exposed to it. One South Sudanese asylum seeker told me that he encountered no source of official information about the UK before he arrived in Calais.²²⁰ While the government may be hoping that information reaches migrants through unofficial routes and via private social networks, this cannot be guaranteed, as there exists a “technology gap” between both old and young, and rich and poor,²²¹ and unofficial information channels can also be unreliable sources.²²² The most likely explanation for this information vacuum is that the government is simply not prioritising those outside of the UK in its messaging regarding the hostile environment. This undermines the notion that the goal of deterrence is being actively pursued, instead suggesting that these policies are for the consumption of domestic audiences.

10.2. Internal Messaging

Where the government has taken steps to broadcast information about the hostile environment, however, has been within the UK. But the nature of these campaigns raises questions about the extent to which migrants themselves are the intended audience of the hostile environment.

In 2013, the Home Office launched the infamous ‘Go Home’ vans, which toured parts of the UK with the message that undocumented migrants should “Go home or face

²²⁰ Interview with South Sudanese asylum seeker, 11 June 2018.

²²¹ Ampofo et al, “Mapping Refugee Media Journeys,” 9.

²²² Ampofo et al, “Mapping Refugee Media Journeys.”

arrest”. The Home Office acknowledges that only 11 people voluntarily returned as a result of this campaign.²²³ This was part of a wider initiative, Operation Vaken, which included running adverts in eight minority ethnic newspapers and placing postcards in shop windows- Again, the success of this was limited, with only 60 people voluntarily leaving the UK.²²⁴ Given the findings of Chapter 9, it seems unlikely that migrants with strong personal reasons for remaining in the UK (e.g. family, relationships, economic reasons, etc.) would be induced to leave simply due to a billboard telling them that they might face arrest- This is something that they are already aware of. The public nature of this campaign, combined with its ineffectiveness in influencing migrant decision-making, suggests that the government cared more about providing a clear, visual message to the domestic audience that they were *doing something*, regardless of whether this *something* had any effect.

Similarly, posters have started appearing in hospital and surgery waiting rooms, informing undocumented migrants that they have no right to healthcare. But given that memoranda are already in circulation requiring health workers to check documentation *prior* to commencing non-emergency treatment, these posters seem hardly necessary- They do not affect the ability of migrants to access treatment. However, by again making this campaign public-facing, permeating public space with messages emphasising restrictions against migrants, the government appears to be doing more to reassure the public that steps are being taken, without really affecting the migrants themselves.²²⁵

²²³ Travis, “‘Go home’ vans resulted in 11 people leaving Britain, says report.”

²²⁴ Ibid.

²²⁵ One may argue that these posters do affect migrants- by contributing to the insidious nature of the hostile environment, and convincing them that they are not wanted in the country. Perhaps this is

The government, in its internal messaging, has sought public-facing campaigns that have been shown to have limited effect. Of course, we must acknowledge that where a target population's location is unknown, often public-facing campaigns are the only way one *could* hope to reach an audience. But the content is also important: The campaigns tell migrants nothing that they are not already aware of. To this end, they appear performative. They seek not to inform migrants of government enforcement or legislation, but to instead signal to domestic audiences that the government is cracking down on undocumented migrants.

11. Conclusions

This thesis is not intended to imply that the government does not care about reducing inflows. Indeed, for a party that has pinned its reputation on its tough stance to immigration, a repeated failure to meet the 'tens of thousands' target has been a perennial embarrassment.²²⁶ But if we look at where the Conservatives' priorities lie, it is clear that at times the government has expressed a preference for politically expedient options that will appeal to public sentiment and promote a reputation for being tough

intended to contribute to their leaving the UK. However, as mentioned multiple times throughout this thesis, voluntary return statistics suggest that if this is the intended goal, it is ineffective.

²²⁶ Andrew Grice, "Two-thirds of people don't believe Theresa May will achieve tens of thousands immigration target," *The Independent*, 2 May 2017, <https://www.independent.co.uk/news/uk/politics/theresa-may-immigration-tens-of-thousands-100000-migration-drop-the-target-open-britain-poll-a7713996.html>.

on immigration, even if this comes at the expense of well-planned and well-executed policy.

The fact that the hostile environment contains many provisions identical or derivative from measures introduced by previous governments does not alone show that deterrence is not the primary objective. But it does imply that the title ‘hostile environment’ is more an exercise in political marketing than a radical new policy direction.

Likewise, in an environment where EBPM is the norm, the Conservatives have implemented policies without comprehensive estimations on the scope of the issue to be tackled prior to instigation, or rigorous assessment post hoc. When dealing with a problem as ambiguous or nebulous as the undocumented population of a country, it is of course understandable that governments will be forced to adopt policies that cannot be measured exactly. But they should be based on some sort of logic or evidence. Where statistics regarding the impact of the hostile environment exist, such as voluntary removals or deportations, they have not shown the hostile environment to be successful- and yet the policies persist. And rogue acts such as revoking London Metropolitan University’s visa-sponsoring license at an unfathomably inconvenient moment serves as further proof that the Conservatives are not just unfortunate in their inability to acquire evidence surrounding the hostile environment: They are actively resisting empiricism, and defying what a logical procedural approach would suggest.

This is compounded by looking at who the hostile environment is meant to affect. While indeed a lot of undocumented migrants travel for economic reasons, for many the

economic reasons are ‘push factors’ from source countries as opposed to ‘pull factors’ towards the UK: This is to say that migrant outflows are not the result of some intrinsic attractiveness of the UK, but because conditions in Western Europe in general are seen as preferable to those in origin countries, even when living with undocumented status. For many undocumented migrants, the draw of the UK specifically is the existence of close cultural ties and family links, and this also represents a reason why they will not leave immediately, even as the government places more restrictions on them. Furthermore, a not insignificant number come via smuggling routes, or fleeing conflict and persecution, and so treating their decision to come to the UK as a genuinely free choice that can be affected by restrictive immigration policy is misguided. This is all to say that measures that seek to dissuade migrants from entering or induce those already present to leave are unlikely to be efficacious. However, if we study this strategy through the lens of an adaptive theory of symbolic policy making, it makes sense: The government is responding to public fears of the effects of immigration- in terms of threats to jobs, the NHS, housing supplies, and so forth- and implementing policies that assuage those threats, regardless of their effectiveness.

Government workers themselves accept that the hostile environment is not backed up by a rigorous enforcement policy necessary to ensure success. Lucy Moreton, general secretary of the Immigration Service Union, told *The Sun* newspaper, “If you don't break the law, we are not going to get you as we don't have the resources. We can't catch you.”²²⁷ This shows that the government’s supposed opposition to immigration is

²²⁷ *The Independent*, “Illegal immigrants 'have very little chance of being caught' due to Government cuts, union boss claims,” 29 November 2017, <https://www.independent.co.uk/news/uk/crime/illegal-immigrants-government-cuts-resources-lucy-moreton-immigration-service-union-brex-it-a8081511.html>.

undermined by its own austerity agenda. Again, this demonstrates that the provisions of the hostile environment have not been backed up with the resources to guarantee success- It merely represents an appeal to what the public feel ought to be done. The consistent legislation pumped out ensures that the government appears to be taking immigration seriously, without the concurrent executive action needed to ensure it.

Finally, we can see from the UK's external communications that messaging to migrants extraterritorially is not a priority for the government. To this end, it is a mystery how those outside of the UK can reasonably be expected to be deterred by the provisions of the hostile environment. Messaging within the UK contains no effective content, arguably doing more to provide the public with reassurance that action is being taken.

At this point, it is worth remembering that, within the context of my theoretical framework, the deterrent nature of the hostile environment stands in tension with the needs of the government to produce constant rafts of new legislation. While, from a symbolic policy perspective, this legislative output is necessary to show the British public that the government is taking action, it necessarily means overcomplicating immigration rules, and reducing the likelihood that potential migrants will be able to acquire knowledge on the full extent of the hostile environment- We saw in Chapter 6 that the British legislature shares these concerns.

The contrast with the case of Australia is stark. In 2014, Australia launched an information campaign video that stated, in no uncertain terms, that Australia was

committed to intercepting and returning *all* ships that entered their waters illegally.²²⁸ Setting the severe human rights concerns regarding this policy aside,²²⁹ it at least represented a clear, simple, and unequivocal message that could not be misinterpreted. The same cannot be said of the hostile environment. The fact that the UK has chosen to prioritise extensive legislation over clarity of messaging serves as evidence that the deterrent nature of the hostile environment is subordinate to the pursuit of symbolic policy making.

Of course, when we consider the limitations of messaging abroad, it is important to remember that the hostile environment serves a dual purpose: It does not seek purely to deter immigration, but to encourage emigration. If the government were to care only about the latter objective, then the lack of investment in messaging would not be a concern: Migrants need not know about the hostile environment before they come, so long as once they are here, conditions are bad enough that they are induced to leave.

However, in Chapter 4 I explained how the government justifies severe breaches of human rights by pointing to migrant agency and rational choice: Migrants who do not wish to experience the hostile environment have a choice to avoid it. But this logic can only make sense within the deterrence paradigm: Without knowledge of the hostile environment prior to entering the UK, a migrant is unwittingly exposing themselves to human rights deprivations that they may not have done if the choice were made with perfect information. This is to say that even if we accept the right of a government to

²²⁸ ABF TV, “No Way. You will not make Australia home - English,” *Youtube*, 15 April 2014, <https://www.youtube.com/watch?v=rT12WH4a92w>.

²²⁹ For example, such a policy prevents victims of forced displacement from claiming asylum.

neglect their duties and withhold entitlements in the face of territorial breaches, this cannot happen without an acceptance that the government has a duty to first inform those extraterritorially, even if the main thrust of the policies is not to deter entry per se. Of course, it may simply be that the government is cruel, and does not actually care about human rights: Perhaps they have lied about the deterrent nature of these policies, and in reality their only concern is inducing emigration. It would, however, be an odd assumption to suppose that a government that wants to reduce the undocumented stock in the UK does not care how many undocumented migrants *enter* the UK, and only cares about those who leave- Since for any population N who enter the UK, the number who can be guaranteed to leave later, even with the most comprehensive internal enforcement policies possible, will undoubtedly be $<N$. Given the rhetoric of senior ministers, it seems that the policies are ostensibly intended to have a strong deterrent component. With this in mind, a government truly committed to using the hostile environment to reduce the overall number of undocumented migrants in the UK would be expected to do more to utilise extraterritorial messaging.

In 2018, something very interesting happened. After the resignation of Home Secretary Amber Rudd in the aftermath of the Windrush scandal, her replacement, Sajid Javid, announced that certain hostile environment measures would be temporarily suspended. Data would cease to be shared between certain government departments (including NHS Digital, the NHS's online database recording patient information) and

the Home Office.²³⁰ This came in response to public polling that revealed that, although hostility to immigration remained at similar levels to previously, and support for the hostile environment was high, two thirds of the public believed that the government had mishandled the Windrush scandal.²³¹ Russell Hargrave, a journalist and former Liberal Democrat staffer, summarised this by saying, “If you press people hypothetically on where they stand on immigration they will espouse tougher and tougher opinions, but when confronted with the reality of Windrush, the policies proved unpopular.”²³² The public like harsh immigration policy in the abstract, but dislike seeing the human cost of this- A similar phenomenon occurred when photographs of Aylan Kurdi washed up on a Turkish beach greatly affected public opinion regarding migrant flows.²³³

Why would the government withdraw these policies at this time? A simplistic answer may be that these policies were intended only to affect undocumented migrants: When the immunity of the Windrush generation could not be guaranteed, the government thought it better to be safe than sorry, and rescinded them. Yet this explanation is unsatisfactory when we consider that the Home Office knew for at least two years prior that the hostile environment was affecting this group:²³⁴ What changed is that the public found out.

²³⁰ Amelia Gentleman, “UK government pauses hostile immigration policies after Windrush,” *The Guardian*, 11 July 2018, <https://www.theguardian.com/uk-news/2018/jul/11/windrush-uk-government-pauses-hostile-immigration-policies>.

²³¹ Wells, “Where the public stands on immigration.”

²³² Interview with Russell Hargrave, 14 June 2018.

²³³ Diane Cole, “Study: What Was The Impact Of The Iconic Photo Of The Syrian Boy?,” *National Public Radio*, 13 January 2017, <https://www.npr.org/sections/goatsandsoda/2017/01/13/509650251/study-what-was-the-impact-of-the-iconic-photo-of-the-syrian-boy>.

²³⁴ *BBC News*, “Home Office 'was told about Windrush problems in 2016',” 25 April 2018, <https://www.bbc.com/news/uk-politics-43900697>.

This emphasises the findings in this thesis. Ultimately, the hostile environment is a nebulous and reactive set of policies, enacted more to appeal to public sentiment of what *should* be done, than as a legitimate pursuit of an ideological policy goal. Where public sympathy runs out, the policies are disposable. While the public remain opposed to immigration in theory and in abstract, the government has a lot to gain from churning out legislation, and taking a tough rhetorical stance, regardless of whether all efforts are made to enforce this or achieve the intended policy goals. While the stated goal is managing migration, the evidence suggests that the government cares more about managing public opinion. This is achieved through symbolic policy making, where the government implements ineffective measures that nevertheless cohere with the public's understanding of what ought to be done. In other words, the hostile environment is more performative than preventative in nature.

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